

**C-1**

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)**

Title 9, Chapter 22

**Amend:** R9-22-712.63



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 6, 20 22

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

**FROM:** Council Staff

**DATE:** November 14, 2022

**SUBJECT:** Arizona Health Care Cost Containment System (AHCCCS)  
Title 9, Chapter 22

**Amend:** R9-22-712.63

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### **Summary:**

This regular Rulemaking from AHCCCS relates to rules in Title 9, Chapter 22, Article 7 regarding Standards for Payments. Specifically, AHCCCS seeks to amend one rule, R9-22-712.63, regarding All Patient Refined Diagnosis Related Groups (APR-DRG) payment methodology. The APR-DRG payment methodology is currently the primary reimbursement method for AHCCCS hospital inpatient care services, AHCCCS transitioned to this payment methodology in 2014 from the previous tiered per diem rates.

Pursuant to A.R.S. S § 36-2903.01, AHCCCS has the authority to implement supplemental payment methodologies or may adjust rates. This rulemaking will create a unique base payment amount for rural hospitals that currently qualify for payment under A.R.S. § 36-2905.02, and will also ensure AHCCCS has the flexibility to continue to provide funding for rural hospitals. The proposed changes to R9-22-712.63 will ensure alignment with previously funded Rural Hospital Inpatient Fund payment within the APR-DRG payment methodology.

AHCCCS received approval from the rulemaking moratorium to initiate this rulemaking on July 19, 2022, and final approval to submit to the Council on October 18, 2022.

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

Yes, AHCCCS cites to both general and specific statutory authority.

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

No, rules do not establish a new fee or fee increase.

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

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

4. **Summary of the agency's economic impact analysis:**

The Administration anticipates that this rulemaking will ensure that current supplemental payments made to rural hospitals may continue as part of the Diagnosis Related Groups (DRG) payment methodology. With this change, \$12.1 million will continue to be provided to critical hospitals in non-urban settings.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Agency states that they did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

6. **What are the economic impacts on stakeholders?**

Inpatient hospitals that are reimbursed by the All Patient Refined Diagnosis Related Groups (APR-DRG) methodology will directly benefit from a reimbursement system that is in line with the current healthcare market and responsive to changes in health care industry coding standards. The update ensures that AHCCCS payment methodologies continue to adjust as factors change over time to support economic growth within Arizona, as well as being reflective of the urban-rural differences that face our healthcare industry.

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

No, there were no changes between the proposed and final rulemaking.

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

Yes, the Department received one comment, in support of the rulemaking, from the Arizona Hospital and Healthcare Association. AHCCCS adequately responded to the comment.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rule does not require the issuance of a general permit or license.

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

No, the rule is not more stringent than federal law.

11. **Conclusion**

As mentioned above, AHCCCS seeks to amend one rule regarding APR-DRG payment methodology as it relates to rural hospitals. AHCCCS is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(4), (“to provide a benefit to the public and a penalty is not associated with a violation of the rule”). Council staff finds that the Department demonstrates adequate justification for an immediate effective date.

Council staff recommends approval of this rulemaking.

October 18, 2022

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair

Governor's Regulatory Review Council

100 North 15th Avenue, Suite 305

Phoenix, Arizona 85007

RE: R9-22-712.63 Rulemaking

Dear Ms. Sorenson:

- |    |  |            |
|----|--|------------|
| 1. | The close of record date:  | 10/03/2022 |
| 2. | Does the rulemaking activity relate to a Five Year Review Report:    | No         |
| a. | If yes, the date the Council approved the Five Year Review Report:   | N/A        |
| 3. | Does the rule establish a new fee:                                   | No         |
| a. | If yes, what statute authorizes the fee:                             | N/A        |
| 4. | Does the rule contain a fee increase:                                | No         |
| 5. | Is an immediate effective date requested pursuant to A.R.S. 41-1032: | Yes        |

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

AHCCCS certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and
7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

/s/

Kasey Rogg  
Assistant Director

Attachments

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM -**

**ADMINISTRATION**

**PREAMBLE**

**1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

R9-22-712.63

Amend

**2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 36-2903.01(A)

Implementing statute: A.R.S. § 36-2903.01(G)(12)

**3. The effective date of the rule:**

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 28 A.A.R. 1232, June 3, 2022

Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 2114, August 26, 2022

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Nicole Fries  
Address: AHCCCS  
Office of Administrative Legal Services  
801 E. Jefferson, Mail Drop 6200  
Phoenix, AZ 85034  
Telephone: (602) 417-4232  
Fax: (602) 253-9115  
E-mail: AHCCCSRules@azahcccs.gov  
Web site: www.azahcccs.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

All Patient Refined Diagnosis Related Groups (APR-DRG) payment methodology is the primary reimbursement method for AHCCCS hospital inpatient care services. AHCCCS transitioned to the APR-DRG payment methodology beginning October 1, 2014 from the previous tiered per diem rates. AHCCCS updated the model starting January 1, 2018 and again beginning October 1, 2021. A.R.S § 36-2905.02 provides two available options to enhance rural hospital reimbursement with existing appropriated monies. AHCCCS has the authority to implement a supplemental payment methodology or may adjust rates established pursuant to section A.R.S § 36-2903.01, subsection G. AHCCCS is proposing to create a unique base payment amount for rural hospitals that current qualify for payments under A.R.S § 36-2905.02. Due to Centers for Medicare & Medicaid Services (CMS) restrictions, this additional base payment amount will ensure AHCCCS has the flexibility to continue to provide funding to rural hospitals. AHCCCS has updated the language to ensure that the

transition from the current payment methodology to the APR-DRG payment methodology has minimal impact to the existing allocation of funds.

Through the public comment process, AHCCCS has determined that additional modifiers were needed in R9-22-712.63 for the methodology to achieve its intended purpose. With this rulemaking, a modification will be made to A.A.C. R9-22-712.63 to create a rural hospital DRG base rate hospital class. The proposed rulemaking will ensure alignment with previously funded Rural Hospital Inpatient Fund payments within the APR-DRG payment methodology.

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

No study was used.

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

The rulemaking will not diminish a previous grant of authority.

**9. A summary of the economic, small business, and consumer impact:**

The Administration anticipates that the DRG rulemaking will ensure that current supplemental payments made to rural hospitals may continue as part of the DRG payment methodology. With this change, 12.1 million dollars will continue to be provided to critical hospitals in non-urban settings.

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

There were no changes between the proposed supplemental rulemaking and the final rulemaking.

**11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

No public comments were submitted during the public comment period for the proposed supplemental rulemaking, however AHCCCS chose to initiate the supplemental rulemaking in order to address the one public comment received during the initial proposed rulemaking and that comment has been included below.

Commenter	Date	Comment	AHCCCS Response
Amy Upston, Director of Financial Policy and Reimbursement - Arizona Hospital and Healthcare Association	7/5/2022	Thank you for the opportunity to comment on the proposed rule for the All Patient Refined Diagnosis Related Groups (APR-DRG) Payment Methodology. I am responding on behalf of the Arizona Hospital and Healthcare Association (AzHHA) and our thirteen rural hospitals that will be impacted by the proposed incorporation of the rural inpatient supplemental payments into the APR-DRG payments methodology. AzHHA deeply appreciates the initiative the AHCCCS Administration has taken on this proposed rule in order to ensure rural hospitals continue to receive the approximate \$12.2 million that has been appropriated annually for almost 20 years in the state budget and which is referenced in A. R. S. § 36-2905.02. These monies are critical to financing these hospitals and ensuring they continue to provide access to care for AHCCCS members. It is our understanding that it is the AHCCCS Administration’s intent to find a way to disburse these monies to the eligible hospitals in such a way that most closely mirrors how they are currently being distributed. AzHHA strongly supports this approach.	AHCCCS appreciates the Arizona Hospital and Healthcare Association feedback in regards to the All Patient Refined Diagnosis Related Group (APR-DRG) payment methodology proposed rule. AHCCCS values the partnership that the agency has established with the Association to provide healthcare services to the AHCCCS members.

		<p>While we realize that funneling the \$12.2 million appropriation through the APR-DRG base payments is likely the best solution for retaining similar payment structure, our members would like to see modeling done prior to the new base rate being finalized and would appreciate another opportunity to provide input on that modeling. Additionally, we are concerned the payment amount for at least one of the hospitals is likely to substantially decrease since a significant portion of its inpatient payments are related to behavioral health services, which are not paid through the APR-DRG methodology. AzHHA would like the opportunity to confirm this once initial modeling is shared with the hospitals and the opportunity to propose additional measures if deemed necessary. For example, AHCCCS may want to consider an APR-DRG adjustor (similar to the high Medicaid volume hold-harmless adjustor) for significantly impacted hospitals or a change in the behavioral health inpatient fee schedule for significantly impacted hospitals.</p> <p>We appreciate your consideration of this request and look forward to additional modeling of each impacted hospital. Please do not hesitate to contact me if you have any questions, or if I can provide additional information.</p>	<p>AHCCCS will continue to work with the Association on the implementation of the rule to try and achieve the best possible outcome as we move from a pass-through payment for the Rural Hospital Inpatient Fund (RHIF) to the incorporation of the funding into the APR-DRG model.</p>
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**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

No other matters.

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

Not applicable.

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

The rule is not more stringent than federal law.

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

Not applicable.

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

Not applicable.

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

Not applicable.

**15. The full text of the rules follows:**

**ARTICLE 7. STANDARDS FOR PAYMENTS**

**Section**

R9-22-712.63      DRG Base Payments Not Based on the Statewide Standardized Amount

## ARTICLE 7. STANDARDS FOR PAYMENTS

### **R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount**

- A. Notwithstanding Section R9-22-712.62, a select specialty hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:
1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
  2. Hospitals designated as type: hospital, subtype: short term that has a license number beginning “SH” in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.
- B. The select specialty hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency’s website.
- C. Notwithstanding Section R9-22-712.62, a rural hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:
1. A health care institution that is licensed as an acute care hospital, that has one hundred or fewer beds, and that is located in a county with a population of less than five hundred thousand persons; or
  2. A health care institution that is licensed as a critical access hospital.
- D. The rural hospital standardized amount is included in the AHCCCS capped fee schedule

available on the agency's website.

- E. Notwithstanding Section R9-22-712.62 and R9-22-712.63(B), a hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) or R9-22-712.63(B) to calculate the DRG base rate for a health care institution that is licensed as an acute care hospital, that has one hundred or fewer beds, that is located in a county with a population of less than five hundred thousand persons and has greater than twenty percent of Medicaid inpatient reimbursement with a primary diagnosis of behavioral health in the prior federal fiscal year as of April 30th.
- F. The hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.
- G. Notwithstanding Section R9-22-712.62 and R9-22-712.63(B), a hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) or R9-22-712.63(B) to calculate the DRG base rate for a health care institution with two separate ADHS acute care hospital licenses, with one facility that has one hundred or fewer beds, that is located in a county with a population of less than five hundred thousand persons and has one single AHCCCS registration for both licenses.
- H. The hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM -**

**ADMINISTRATION**

**ARTICLE 7. STANDARDS FOR PAYMENTS (R9-22-712.63)**

**1. Identification of rulemaking.**

The Arizona Health Care Cost Containment System Administration is the single State agency responsible for administration of the Medicaid program in Arizona. The program is jointly funded by the State, counties, and the federal government. Federal law imposes a substantial number of conditions on the receipt of federal financial assistance reflected in federal statutes (42 U.S.C. § 1396 et seq.) and regulation (generally, 42 C.F.R. Parts 430 through 455). While States are provided substantial flexibility with respect to the payment methods for health care providers that agree to participate, federal law does require that states “assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.” 42 U.S.C. § 1396a(a)(30)(A).

As background, State law requires the agency to adopt a diagnosis-related group (DRG) based hospital reimbursement methodology consistent with Title XIX of the Social Security Act for inpatient dates of service on and after October 1, 2014. A.R.S. § 36-2903.01(G)(12). A diagnosis- related group (DRG) based hospital reimbursement methodology pays a fixed amount on a “per discharge basis.” Under this methodology

each claim is assigned to a DRG based on the patient's diagnoses, surgical procedures performed, age, gender, birth weight, and discharge status. The goal of diagnosis-related groups is to classify inpatient stays into categories based on similar clinical conditions and on similar levels of hospital resources required for treatment. These categories are identified using Diagnosis-Related Group (DRG) codes each of which is assigned a relative weight appropriate for the relative amount of hospital resources expected to be used to treat the patient.

Pursuant to A.R.S. § 36-2903.01(G), the agency promulgates rules that describe the payment methodology; however, per A.R.S. § 41-1005(A)(9), the agency is not required to have rules that set forth the actual amounts of fee-for-service payments. As a condition of federal financial participation, the agency is required to provide notice through its website and/or publication through the State administrative register. In addition, the State must provide an opportunity for public comment on significant proposed changes to methods and standard for payment rates. 42 U.S.C. § 1396a(a)(13) and 42 C.F.R. § 447.205.

AHCCCS transitioned to the APR-DRG payment methodology beginning October 1, 2014 from the previous tiered per diem rates. AHCCCS updated the model starting January 1, 2018 and again beginning October 1, 2021. A.R.S § 36-2905.02 provides two available options to enhance rural hospital reimbursement with existing appropriated monies. AHCCCS has the authority to implement a supplemental payment methodology or may adjust rates established pursuant to section A.R.S § 36-2903.01, subsection G. AHCCCS is proposing to create a unique base payment amount for rural hospitals that current qualify for payments under A.R.S § 36-2905.02. Due to Centers for Medicare &

Medicaid Services (CMS) restrictions, this additional base payment amount will ensure AHCCCS has the flexibility to continue to provide funding to rural hospitals. AHCCCS has updated the language to ensure that the transition from the current payment methodology to the APR-DRG payment methodology has minimal impact to the existing allocation of funds.

Through the public comment process, AHCCCS has determined that additional modifiers were needed in R9-22-712.63 for the methodology to achieve its intended purpose. With this rulemaking, a modification will be made to A.A.C. R9-22-712.63 to create a rural hospital DRG base rate hospital class. The proposed rulemaking will ensure alignment with previously funded Rural Hospital Inpatient Fund payments within the APR-DRG payment methodology.

**a. The conduct and its frequency of occurrence that the rule is designed to change:**

The rule is designed to regulate the payment methods used by the agency and its contractors. The proposed changes are intended to update the APR-DRG reimbursement system for rural hospital services and facilitate future updates by making the process less burdensome to stakeholders.

**b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

If the rule is not changed the cost of that differential will burden rural hospitals, and indirectly patients in Arizona.

c. **The estimated change in frequency of the targeted conduct expected from the rule change:**

There is no estimated change in frequency of the targeted conduct.

2. **Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rule making.**

Inpatient hospitals that are reimbursed by the APR-DRG methodology will directly benefit from a reimbursement system that is in line with the current health care market and responsive to changes in health care industry coding standards. The update ensures that AHCCCS payment methodologies continue to adjust as factors change over time to support economic growth within Arizona, as well as being reflective of the urban-rural differences that face our healthcare industry.

3. **Cost benefit analysis.**

a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:**

i. **Cost:**

The federal government, through the Medicaid program, will fund a substantial percentage of this expense, varying by eligibility category. The Agency does not anticipate that the rule will have an effect on State revenues or materially impact other agencies.

**ii. Benefit:**

The Administration anticipates that the DRG rulemaking will ensure that hospital inpatient payments to hospitals paid under the DRG methodology better align with updated labor share and wage indices for their specific geographical area beginning contract year October 1, 2022 through September 30, 2023.

**iii. Need for additional Full-time Employees:**

The Agency does not anticipate the need to hire full-time employees as a result of this rulemaking.

**b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

This rulemaking does not directly affect political subdivisions.

**4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.**

The Agency anticipates that public and private employment will not be impacted by the changes.

5. **Statement of probable impact of the proposed rule on small businesses. The statement shall include:**

a. **Identification of the small businesses subject to the proposed rulemaking.**

Of the 137 licensed hospitals in Arizona, 2 hospitals satisfy the definition of small businesses, Arizona Orthopedic Surgical & Specialty Hospital and Arizona Spine & Joint Hospital, and subject to the APR-DRG reimbursement methodology that is the subject of the rulemaking. However, neither of these hospitals are rural hospitals and therefore are not subject to the language being changed by this rulemaking.

b. **Administrative and other costs required for compliance with the proposed rulemaking.**

The Agency anticipates no impact on the administrative expenses of these small businesses because the proposed rule does not require a change in claim submission coding or procedure.

c. **Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not use each method:**

i. **Establishing less stringent compliance or reporting requirements in the rule for small businesses;**

This rule does not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute.

ii. **Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;**

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iii. **Consolidate or simplify the rule's compliance or reporting requirements for small businesses;**

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iv. **Establish performance standards for small businesses to replace design or operational standards in the rule; and**

This rule does not establish performance standards for small businesses beyond those requirements that are necessary to comply with federal law and state statute.

v. **Exempting small businesses from any or all requirements of the rule.**

Exempting small businesses is not applicable to this rule beyond those requirements that are necessary to comply with federal law and state statute.

d. **The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

The rule will not affect private persons and consumers.

6. **Statement of the probable effect on state revenues.**

It is anticipated that the rule will not affect state revenues.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Agency did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

No additional data was obtained and used as the basis of this rule.

## TITLE 9. HEALTH SERVICES

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ing at 18 A.A.R. 2340, effective November 11, 2012  
(Supp. 12-3).

**R9-22-606. Contract Compliance Sanction**

- A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
  2. Imposition of a monetary sanction.
- B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
- D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**ARTICLE 7. STANDARDS FOR PAYMENTS****R9-22-701. Standards for Payments Related Definitions**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

“Accommodation” means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is semi-private except when the member must be isolated for medical reasons. Types of accommodation include hospital routine medical/surgical units, intensive care units, and any other specialty care unit in which room and board are provided.

“Aggregate” means the combined amount of hospital payments for covered services provided within and outside the GSA.

“AHCCCS inpatient hospital day or days of care” means each day of an inpatient stay for a member beginning with the day of admission and including the day of death, if applicable, but excluding the day of discharge, provided that all eligibility, medical necessity, and medical review requirements are met.

“Ancillary service” means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

“APC” means the Ambulatory Payment Classification system under 42 CFR 419.31 used by Medicare for grouping clinically and resource-similar procedures and services.

“Billed charges” means charges for services provided to a member that a hospital includes on a claim consistent with the rates and charges filed by the hospital with Arizona Department of Health Services (ADHS).

“Business agent” means a company such as a billing service or accounting firm that renders billing statements and receives payment in the name of a provider.

“Capital costs” means costs as reported by the hospital to CMS as required by 42 CFR 413.20.

“Copayment” means a monetary amount, specified by the Director, that a member pays directly to a contractor or provider at the time covered services are rendered.

“Cost-to-charge ratio” (CCR) means a hospital’s costs for providing covered services divided by the hospital’s charges for the same services. The CCR is the percentage derived from the cost and charge data for each revenue code provided to AHC-CCS by each hospital.

“Covered charges” means billed charges that represent medically necessary, reasonable, and customary items of expense for covered services that meet medical review criteria of AHC-CCS or a contractor.

“CHC” means a Community Health Center, which includes both Federally Qualified Health Centers and Rural Health Clinics.

“CPT” means Current Procedural Terminology, published, and updated by the American Medical Association. CPT is a nationally-accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians that provide a uniform language to accurately designate medical, surgical, and diagnostic services.

“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g).

“Direct graduate medical education costs” or “direct program costs” means the costs that are incurred for the education activities of an approved graduate medical education program that are the proximate result of training medical residents in the hospital, including resident salaries and fringe benefits, the portion of teaching physician salaries and fringe benefits that are related to the time spent in teaching and supervision of residents, and other related GME overhead costs.

“DRI inflation factor” means Global Insights Prospective Hospital Market Basket.

“Eligibility posting” means the date a member’s eligibility information is entered into the AHCCCS Pre-paid Medical Management Information System (PMMIS).

“Encounter” means a record of a medically-related service rendered by an AHCCCS-registered provider to a member enrolled with a contractor on the date of service.

“Existing outpatient service” means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), regardless of whether the service was explicitly described in the hospital charge master before filing the increase or how the service was described in the charge master before filing the increase.

“Expansion funds” means funds appropriated to support GME program expansions as described under A.R.S. § 36-2903.01(G)(9)(b) and (c)(i).

“Factor” means a person or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the organization for an added fee or a deduction of a portion of the accounts receivable. Factor does not include a business agent.

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“Fiscal intermediary” means an organization authorized by CMS to make determinations and payments for Part A and Part B provider services for a given region.

“Freestanding Children’s Hospital” means a separately standing hospital with at least 120 pediatric beds that is dedicated to providing the majority of the hospital’s services to children.

“GME program approved by the Administration” or “approved GME program” means a graduate medical education program that has been approved by a national organization as described in 42 CFR 415.152.

“Graduate medical education (GME) program” means an approved residency or fellowship program that prepares a physician for independent practice of medicine by providing didactic and clinical education in a medical environment to a medical student who has completed a recognized undergraduate medical education program.

“HCAC” means a health care acquired condition described under 42 CFR 447.26 but does not include Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.

“HCPCS” means the Health Care Procedure Coding System, published, and updated by Center for Medicare and Medicaid Services (CMS). HCPCS is a listing of codes and descriptive terminology used for reporting the provision of physician services, other health care services, and substances, equipment, supplies, or other items used in health care services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as specified under 45 CFR 162, that establishes standards and requirements for the electronic transmission of certain health information by defining code sets used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

“ICU” means the intensive care unit of a hospital.

“Indirect program costs” means the marginal increase in operating costs that a provider experiences as a result of having an approved graduate medical education program and that is not accounted for by the direct program costs.

“Intern and Resident Information System” means a software program used by teaching providers and the provider community for collecting and reporting information on resident training in hospital and non-hospital settings.

“Medical education costs” means direct costs for intern and resident salaries, fringe benefits, program costs, nursing school education, and paramedical education, as described in the Medicare Provider Reimbursement Manual.

“Medical review” means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post-payment review, or determining medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

“Medicare Urban or Rural Cost-to-Charge Ratio (CCR)” means statewide average capital cost-to-charge ratio published annually by CMS added to the urban or rural statewide average operating cost-to-charge ratio published annually by CMS.

“National Standard code sets” means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.

“New hospital” means a hospital for which Medicare Cost Report claim and encounter data are not available for the fiscal year used for initial rate setting or rebasing.

“NICU” means the neonatal intensive care unit of a hospital that is classified as a Level II or Level III perinatal center by the Arizona Perinatal Trust.

“Non-IHS Acute Hospital” means a hospital that is not run by Indian Health Services, is not a free-standing psychiatric hospital, such as an IMD, and is paid under ADHS rates.

“Observation day” means a physician-ordered evaluation period of less than 24 hours to determine whether a person needs treatment or needs to be admitted as an inpatient. Each observation day consists of a period of 24 hours or less.

“Operating costs” means AHCCCS-allowable accommodation costs and ancillary department hospital costs excluding capital and medical education costs.

“OPPC” means an Other Provider Preventable Condition that is: (1) a wrong surgical or other invasive procedure performed on a patient, (2) a surgical or other invasive procedure performed on the wrong body part, or (3) a surgical or other invasive procedure performed on the wrong patient.

“Organized health care delivery system” means a public or private organization that delivers health services. It includes, but is not limited to, a clinic, a group practice prepaid capitation plan, and a health maintenance organization.

“Outlier” means a hospital claim or encounter in which the operating costs per day for an AHCCCS inpatient hospital stay meet the criteria described under this Article and A.R.S. § 36-2903.01(G).

“Outpatient hospital service” means a service provided in an outpatient hospital setting that does not result in an admission.

“Ownership change” means a change in a hospital’s owner, lessor, or operator under 42 CFR 489.18(a).

“Participating institution” means an institution at which portions of a graduate medical education program are regularly conducted and to which residents rotate for an educational experience for at least one month.

“Peer group” means hospitals that share a common, stable, and independently definable characteristic or feature that significantly influences the cost of providing hospital services, including specialty hospitals that limit the provision of services to specific patient populations, such as rehabilitative patients or children.

“PPC” means prior period coverage. PPC is the period of time, prior to the member’s enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.

“PPS bed” means Medicare-approved Prospective Payment beds for inpatient services as reported in the Medicare cost reports for the most recent fiscal year for which the Administration has a complete set of Medicare cost reports for every rural hospital as determined as of the first of February of each year.

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“Primary care GME program” means a graduate medical education program that prepares a physician for the practice of internal medicine, family medicine, pediatrics, obstetrics, geriatrics, or psychiatry.

“Procedure code” means the numeric or alphanumeric code listed in the CPT or HCPCS manual by which a procedure or service is identified.

“Prospective rates” means inpatient or outpatient hospital rates set by AHCCCS in advance of a payment period and representing full payment for covered services excluding any quick-pay discounts, slow-pay penalties, and first-and third-party payments regardless of billed charges or individual hospital costs.

“Public hospital” means a hospital that is owned and operated by county, state, or hospital health care district.

“Qualifying health information exchange organization” means a non-profit health information organization as defined in A.R.S. § 36-3801 that provides the statewide exchange of patient health information among disparate health care organizations and providers not owned, operated, or controlled by the health information exchange. A qualifying health information exchange organization must include representation by the administration on its board of directors, and have a significant number of health care participants, including hospitals, laboratories, payers, community physicians and Federally Qualified Health Centers.

“Rebase” means the process by which the most currently available and complete Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same year are collected and analyzed to reset the Inpatient Hospital Tiered per diem rates, or the Outpatient Hospital Capped Fee-For-Service Schedule.

“Reinsurance” means a risk-sharing program provided by AHCCCS to contractors for the reimbursement of specified contract service costs incurred by a member beyond a certain monetary threshold.

“Remittance advice” means an electronic or paper document submitted to an AHCCCS-registered provider by AHCCCS to explain the disposition of a claim.

“Resident” means a physician engaged in postdoctoral training in an accredited graduate medical education program, including an intern and a physician who has completed the requirements for the physician’s eligibility for board certification.

“Revenue code” means a numeric code, that identifies a specific accommodation, ancillary service, or billing calculation, as defined by the National Uniform Billing committee for UB04 forms.

“Sub-acute services” means inpatient care for a patient with an acute illness, injury, or exacerbation of a disease process when the patient does not require acute inpatient hospitalization. Sub-acute care is rendered immediately after, or instead of, acute inpatient hospitalization.

“Specialty facility” means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.

“Sponsoring institution” means the institution or entity that is recognized by the GME accrediting organization and designated as having ultimate responsibility for the assurance of

academic quality and compliance with the terms of accreditation.

“Tier” means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure, or revenue codes, peer group, NICU classification level, or any combination of these items.

“Tiered per diem” means an AHCCCS capped fee schedule in which payment is made on a per-day basis depending upon the tier (or tiers) into which an AHCCCS inpatient hospital day of care is assigned.

“Trip” means a one-way transport each time a taxi is called. If the taxi waits for the member, then the transport continues to be part of the one-way trip. If the taxi leaves and is called to pick up the member, that is considered a new one-way trip.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-701 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-701 repealed, new Section R9-22-701 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014; amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 837 (April 29, 2022), with an immediate effective date of April 5, 2022 (Supp. 22-2).

- R9-22-701.01. Reserved**
- R9-22-701.02. Reserved**
- R9-22-701.03. Reserved**
- R9-22-701.04. Reserved**
- R9-22-701.05. Reserved**
- R9-22-701.06. Reserved**
- R9-22-701.07. Reserved**
- R9-22-701.08. Reserved**
- R9-22-701.09. Reserved**
- R9-22-701.10 Scope of the Administration’s and Contractor’s Liability**

The Administration shall bear no liability for providing covered services for any member beyond the date of termination of the member’s eligibility or during the member’s enrollment with a con-

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tractor. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of this Chapter and as specified in contract.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

**R9-22-702. Charges to Members**

- A. For purposes of this subsection, the term “member” includes the member’s financially responsible representative as described under A.R.S. § 36-2903.01.
- B. Registered providers must accept payment from the Administration or a contractor as payment in full.
- C. Except as provided in subsection (D) a registered provider shall not request or collect payment from, refer to a collection agency, or report to a credit reporting agency an eligible person or a person claiming to be an eligible person.
- D. An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member:
  1. To collect the copayment described in R9-22-711;
  2. To recover from a member that portion of a payment made by a third party to the member for an AHCCCS covered service if the member has not transferred the payment to the Administration or the contractor as required by the statutory assignment of rights to AHCCCS;
  3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member’s AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied;
  4. For a service that is excluded by statute or rule, or provided in an amount that exceeds a limitation in statute or rule, if the member signs a document in advance of receiving the service stating that the member understands the service is excluded or is subject to a limit and that the member will be financially responsible for payment for the excluded service or for the services in excess of the limit;
  5. When the contractor or the Administration has denied authorization for a service if the member signs a document in advance of receiving the service stating that the member understands that authorization has been denied and that the member will be financially responsible for payment for the service;
  6. For services requested for a member enrolled with a contractor, and rendered by a noncontracting provider under circumstances where the member’s contractor is not responsible for payment of “out of network” services under R9-22-705(A), if the member signs a document in advance of receiving the service stating that the member understands the provider is out of network, that the member’s contractor is not responsible for payment, and that the member will be financially responsible for payment for the excluded service;
  7. For services rendered to a person eligible for the FESP if the provider submits a claim to the Administration in the reasonable belief that the service is for treatment of an emergency medical condition and the Administration denies the claim because the service does not meet the criteria of R9-22-217; or

8. If the provider has received verification from the Administration that the person was not an eligible person on the date of service.

- E. The signature requirement of subsections (D)(4), (D)(5), and (D)(6) do not apply if:
  1. The member is unable or incompetent to sign such a document, or
  2. When services are rendered for the purpose of treating an emergency medical condition as defined in R9-22-217 and a delay in providing treatment to obtain a signature would have a significant adverse affect on the member’s health.
- F. Except as provided for in this Section, registered providers shall not bill a member when the provider could have received reimbursement from the Administration or a contractor but for the provider’s failure to file a claim in accordance with the requirements of AHCCCS statutes, rules, the provider agreement, or contract, such as, but not limited to, requirements to request and obtain prior authorization, timely filing, and clean claim requirements.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-702 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text identical to the emergency (Supp. 83-3). Former Section R9-22-702 repealed, new Section R9-22-702 adopted effective October 1, 1983 (Supp. 83-5). Amended by adding subsection (B) effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).

**R9-22-703. Payments by the Administration**

- A. General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B. Timely submission of claims.
  1. Under A.R.S. § 36-2904, the Administration shall deem a paper claim to be submitted on the date that it is received by the Administration. An electronic claim is deemed received by the Administration when the claim enters the information processing system designated by the Administration for electronic claims in a form that is capable of being processed by the designated information processing system. The Administration shall do one or more of the following for each claim it receives:

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- a. Place a date stamp on the face of the claim,
  - b. Assign a system-generated claim reference number, or
  - c. Assign a system-generated date-specific number.
2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
    - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
    - b. Six months from the date of eligibility posting.
  3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
    - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
    - b. Twelve months from the date of eligibility posting.
  4. Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an HIS or tribal facility for a covered service unless the claim is initially submitted within 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.
- C. Claims processing.**
1. The Administration shall notify the AHCCCS-registered provider with a remittance advice when a claim is processed for payment.
  2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:
    - a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
    - b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
    - c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.
  3. A claim is paid on the date indicated on the disbursement check.
  4. A claim is denied as of the date of the remittance advice.
  5. The Administration shall process a hospital claim under this Article.
- D. Prior authorization.**
1. An AHCCCS-registered provider shall:
    - a. Obtain prior authorization from the Administration for non-emergency hospital admissions, covered services as specified in Articles 2 and 12 of this Chapter, and for administrative days as described in R9-22-712.75,
    - b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and
    - c. Make records available for review by the Administration upon request.
  2. The Administration may deny a claim if the provider fails to comply with subsection (D)(1).
  3. If the Administration issues prior authorization for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the Administration shall adjust the claim payment.
- E. Review of claims and coverage for hospital supplies.**
1. The Administration may conduct prepayment and post-payment review of any claims, including but not limited to hospital claims.
  2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
    - a. Patient care kit,
    - b. Toothbrush,
    - c. Toothpaste,
    - d. Petroleum jelly,
    - e. Deodorant,
    - f. Septi soap,
    - g. Razor or disposable razor,
    - h. Shaving cream,
    - i. Slippers,
    - j. Mouthwash,
    - k. Shampoo,
    - l. Powder,
    - m. Lotion,
    - n. Comb, and
    - o. Patient gown.
  3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
    - a. Arm board,
    - b. Diaper,
    - c. Underpad,
    - d. Special mattress and special bed,
    - e. Gloves,
    - f. Wrist restraint,
    - g. Limb holder,
    - h. Disposable item used instead of a durable item,
    - i. Universal precaution,
    - j. Stat charge, and
    - k. Portable charge.
  4. The Administration shall determine in a hospital claims review whether services rendered were:
    - a. Covered services as defined in Article 2;
    - b. Medically necessary;
    - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
    - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.
  5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.A.C. 34.
- F. Overpayment for AHCCCS services.**
1. An AHCCCS-registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.
  2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS-registered provider fails to return the overpaid amount to the Administration.
  3. The Administration shall document any recoupment of an overpayment on a remittance advice.

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4. An AHCCCS-registered provider may file a claim dispute under 9 A.A.C. 34 if the AHCCCS-registered provider disagrees with a recoupment action.
- G. For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.
- H. Prior quarter reimbursement. A provider shall:
  1. Bill the Administration for services provided during a prior quarter eligibility period upon verification of eligibility or upon notification from a member of AHCCCS eligibility.
  2. Reimburse a member when payment has been received from the Administration for covered services during a prior quarter eligibility period. All funds paid by the member shall be reimbursed.
  3. Accept payment received by the Administration as payment in full.
- I. Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
- J. Payment for out-of-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an out-of-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- K. Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. The Administration shall reimburse an in-state or out-of-state provider of inpatient hospital services rendered with a discharge date on or after October 1, 2014, the DRG rate established by the Administration.
- L. The Administration may enter into contracts for the provisions of transplant services.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R-22-703 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-703 repealed, new Section R9-22-703 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective September 16, 1987 (Supp. 87-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective

October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 27 A.A.R. 237, effective April 4, 2021 (Supp. 21-1).

**R9-22-704. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-704 adopted as an emergency now adopted and amended as a permanent rule effective August 30 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended subsection A., Paragraph 2. effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

**R9-22-705. Payments by Contractors**

- A. General requirements. A contractor shall contract with providers to provide covered services to members enrolled with the contractor. The contractor is responsible for reimbursing providers and coordinating care for services provided to a member. Except as provided in subsection (A)(2), a contractor is not required to reimburse a noncontracting provider for services rendered to a member enrolled with the contractor.
  1. Providers. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
  2. A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor as specified in this Article if:
    - a. The contractor referred the member to the provider or authorized the provider to render the services and the claim is otherwise payable under this Chapter, or
    - b. The service is emergent under Article 2 of this Chapter.
- B. Timely submission of claims.
  1. Under A.R.S. § 36-2904, a contractor shall deem a paper or electronic claim as submitted on the date that the claim is received by the contractor. The contractor shall do one or more of the following for each claim the contractor receives:
    - a. Place a date stamp on the face of the claim,
    - b. Assign a system-generated claim reference number, or
    - c. Assign a system-generated date-specific number.
  2. Unless a shorter time period is specified in subcontract, a contractor shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
    - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
    - b. Six months from the date of eligibility posting.

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3. Unless a shorter time period is specified in subcontract, a contractor shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
  - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
  - b. Twelve months from the date of eligibility posting.
- C. Date of claim.
  1. A contractor's date of receipt of an inpatient or an outpatient hospital claim is the date the claim is received by the contractor as indicated by the date stamp on the claim, the system-generated claim reference number, or the system-generated date-specific number assigned by the contractor.
  2. A hospital claim is considered paid on the date indicated on the disbursement check.
  3. A denied hospital claim is considered adjudicated on the date of the claim's denial.
  4. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the contractor shall assign a new date of receipt upon receipt of the additional documentation.
  5. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the contractor shall not assign a new date of receipt.
  6. A contractor and a hospital may, through a contract approved as specified in R9-22-715, adopt a method for identifying, tracking, and adjudicating a claim that is different from the method described in this subsection.
- D. Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. A contractor shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at either a rate specified by subcontract or, in absence of the subcontract, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715. This subsection does not apply to an urban contractor as specified in R9-22-718 and A.R.S. § 36-2905.01.
- E. Payment for Inpatient out-of-state hospital payments for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- F. Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- G. Payment for in-state outpatient hospital services.
 

A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other Sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- H. Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the contractor shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.
- I. Payment for observation days. A contractor shall reimburse a provider and a noncontracting provider for the provision of observation days at either a rate specified by subcontract or, in the absence of a subcontract, as prescribed under R9-22-712, R9-22-712.10, and R9-22-712.45.
- J. Review of claims and coverage for hospital supplies.
  1. A contractor may conduct a review of any claims submitted and recoup any payments made in error.
  2. A hospital shall obtain prior authorization from the appropriate contractor for nonemergency admissions. When issuing prior authorization, a contractor shall consider the medical necessity of the service, and the availability and cost effectiveness of an alternative treatment. Failure to obtain prior authorization when required is cause for nonpayment or denial of a claim. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which the contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of the subcontract regarding utilization control activities. A hospital shall cooperate with a contractor's reasonable activities necessary to perform concurrent review and shall make the hospital's medical records pertaining to a member enrolled with a contractor available for review.
  3. Regardless of prior authorization or concurrent review activities, a contractor may make prepayment or post-payment review of all claims, including but not limited to a hospital claim. A contractor may recoup an erroneously paid claim. If prior authorization was given for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the contractor shall adjust the claim payment.
  4. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures if the subcontract meets the requirements of R9-22-715.
  5. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
    - a. Patient care kit,
    - b. Toothbrush,
    - c. Toothpaste,
    - d. Petroleum jelly,
    - e. Deodorant,
    - f. Septi soap,
    - g. Razor,
    - h. Shaving cream,
    - i. Slippers,
    - j. Mouthwash,
    - k. Disposable razor,
    - l. Shampoo,

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- m. Powder,
- n. Lotion,
- o. Comb, and
- p. Patient gown.
- 6. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
  - a. Arm board,
  - b. Diaper,
  - c. Underpad,
  - d. Special mattress and special bed,
  - e. Gloves,
  - f. Wrist restraint,
  - g. Limb holder,
  - h. Disposable item used instead of a durable item,
  - i. Universal precaution,
  - j. Stat charge, and
  - k. Portable charge.
- 7. The contractor shall determine in a hospital claims review whether services rendered were:
  - a. Covered services as defined in R9-22-201;
  - b. Medically necessary;
  - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
  - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2904.
- 8. If a contractor adjudicates a claim or recoups payment for a claim, a person may file a claim dispute challenging the adjudication or recoupment as described under 9 A.A.C. 34.
- K.** Non-hospital claims. A contractor shall pay claims for non-hospital services in accordance with contract, or in the absence of a contract, at a rate not less than the Administration's capped fee-for-service schedule or at a lower rate if negotiated between the two parties.
- L.** Payments to hospitals. A contractor shall pay for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and as described in A.R.S. § 36-2904:
  - 1. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
  - 2. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
  - 3. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a 1 percent penalty of the rate for each month or portion of the month following the 60th day of receipt of the bill until date of payment.
- M.** Interest payment. In addition to the requirements in subsection (L), a contractor shall pay interest for late claims as defined by contract.
- N.** For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-705 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-

1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the amended rule identical to emergency (Supp. 83-3). Former Section R9-22-705 repealed, new Section R9-22-705 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (C) effective October 1, 1987; amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-706. Repealed**

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-706 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-706 repealed, new Section R9-22-706 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsections (A), (D), (E), (F), and (G) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (F) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (F) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4).

**R9-22-707. Repealed**

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**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-707 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Repealed as a permanent action effective May 16, 1983 (Supp. 83-3). New Section R9-22-707 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1985 (Supp. 85-5). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

**R9-22-708. Payments for Services Provided to Eligible American Indians**

- A. For purposes of this Article "IHS enrolled" or "enrolled with IHS" means an American Indian who has elected to receive covered services through IHS instead of a contractor.
- B. For an American Indian who is enrolled with IHS, AHCCCS shall pay IHS the most recent all-inclusive inpatient, outpatient or ambulatory surgery rates published by Health and Human Services (HHS) in the *Federal Register*, or a separately contracted rate with IHS, for AHCCCS-covered services provided in an IHS facility. AHCCCS shall reimburse providers for the Medicare coinsurance and deductible amounts required to be paid by the Administration or contractor in A.A.C. Chapter 29, Article 3 of this Title.
- C. When IHS refers an American Indian enrolled with IHS to a provider other than an IHS or tribal facility, the provider to whom the referral is made shall obtain prior authorization from AHCCCS for services as required under Articles 2, 7 or 12 of this Chapter.
- D. For an American Indian enrolled with a contractor, AHCCCS shall pay the contractor a monthly capitation payment.
- E. Once an American Indian enrolls with a contractor, AHCCCS shall not reimburse any provider other than IHS or a Tribal facility.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-708 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-708 repealed, new Section R9-22-708 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-708 renumbered and amended as Section R9-22-709, new Section R9-22-708 adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4). Amended by final

rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-709. Contractor's Liability to Hospitals for the Provision of Emergency and Post-stabilization Care**

A contractor is liable for emergency hospitalization and post-stabilization care as described in R9-22-210 and R9-22-210.01.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-709 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-709 repealed, new Section R9-22-709 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-709 renumbered and amended as Section R9-22-713, former Section R9-22-708 renumbered and amended as Section R9-22-709 effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-710. Payments for Non-hospital Services**

- A. Capped fee-for-service. The Administration shall provide notice of changes in methods and standards for setting payment rates for services in accordance with 42 CFR 447.205, December 19, 1983, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
  1. Non-contracted services. In the absence of a contract that specifies otherwise, a contractor shall reimburse a provider or noncontracting provider for non-hospital services according to the Administration's capped-fee-for-service schedule.
  2. Procedure codes. The Administration shall maintain a current copy of the National Standard Code Sets mandated under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004), incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
    - a. A person shall submit an electronic claim consistent with 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
    - b. A person shall submit a paper claim using the National Standard Code Sets as described under 45

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CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).

- c. The Administration may deny a claim for failure to comply with subsection (A) (2) (a) or (b).
3. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee-for-service rates specified in subsections (A)(3)(a) through (A)(3)(d) unless a different fee is specified in a contract between the Administration and the provider, or is otherwise required by law.
  - a. Physician services. Fee schedules for payment for physician services are on file at the central office of the Administration for reference use during customary business hours.
  - b. Dental services. Fee schedules for payment for dental services are on file at the central office of the Administration for reference use during customary business hours.
  - c. Transportation services. Fee schedules for payment for transportation services are on file at the central office of the Administration for reference use during customary business hours. For dates of service beginning:
    - i. October 1, 2012 through September 30, 2013, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2012.
    - ii. October 1, 2013 through September 30, 2014, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2013.
    - iii. October 1, 2014 through September 30, 2015, the Administration and its contractors shall reimburse ambulance services at 74.74 percent of the ADHS rates that are in effect as of August 2, 2014.
  - d. Medical supplies and durable medical equipment (DME). Fee schedules for payment for medical supplies and DME are on file at the central office of the Administration for reference use during customary business hours. The Administration shall reimburse a provider once for purchase of DME during any two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless prior authorized by the Administration, no more than one repair and adjustment of DME shall be reimbursed during any two-year period.
- B. Pharmacy services. The Administration shall not reimburse pharmacy services unless the services are provided by a pharmacy having a subcontract with a Pharmacy Benefit Manager (PBM) contracted with AHCCCS. Except as specified in subsection (C), the Administration shall reimburse pharmacy services according to the terms of the contract.
- C. FQHC Pharmacy reimbursement.
  1. For purposes of this Section the following terms are defined:
    - a. "340B Drug Pricing Program" means the discount drug purchasing program described in 42 U.S.C 256b.
    - b. "340B Ceiling Price" means the maximum price that drug manufacturers can charge covered entities participating in the 340B Drug Pricing Program as reported by the drug manufacturer to HRSA.
    - c. "340B entity" means a covered entity, eligible to participate in the 340B Drug Pricing Program, as defined by the Health Resources and Human Services Administration.
    - d. "Actual Acquisition Cost (AAC)" means the purchase price of a drug paid by a pharmacy net of discounts, rebates, chargebacks and other adjustments to the price of the drug. The AAC excludes dispensing fees.
    - e. "Contracted Pharmacy" means an arrangement through which a 340B entity may contract with an outside pharmacy to provide comprehensive pharmacy services utilizing medications subject to 340B pricing.
    - f. "Dispensing Fee" means the amount paid for the professional services provided by the pharmacist for dispensing a prescription. The Dispensing Fee does not include any payment for the drugs being dispensed.
    - g. "Federally Qualified Health Center" means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the criteria under sections 1861(aa)(4) and 1905(l)(2)(B) of the Social Security Act and receives funds under section 330 of the Public Health Service Act.
    - h. "Federally Qualified Health Center Look-Alike" means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the definition of "health center" under section 330 of the Public Health Service Act, but does not receive grant funding under section 330.
    - i. "FQHC or FQHC Look-Alike pharmacy" means a pharmacy that dispenses drugs to FQHC or FQHC-LA patients and that is owned and/or operated by an FQHC/FQHC-LA or by an entity that reports the costs of an FQHC/FQHC-LA on its Medicare Cost Report, whether or not collocated with an FQHC or an FQHC Look-Alike.
2. Effective the later of February 1, 2012, or CMS approval of a State Plan Amendment, an FQHC or FQHC Look-Alike shall:
  - a. Notify the AHCCCS provider registration unit of its status as a 340B covered entity no later than:
    - i. 30 days after the effective date of this Section;
    - ii. 30 days after registration with the Health Resources and Services Administration (HRSA) for participation in the 340B program, or
    - iii. The time of application to become an AHCCCS provider.
  - b. Provide the 340B pricing file to the AHCCCS Administration upon request. The 340B pricing file shall be provided in the file format as defined by AHCCCS.
  - c. Identify 340B drug claims submitted to the AHCCCS FFS PBM or the Managed Care Contractors' PBMs for reimbursement. The 340B drug claim identification and claims processing for a drug claim submission shall be consistent with claim instructions.

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tions issued and required by AHCCCS to identify such claims.

3. The FQHC and the FQHC Look-Alike pharmacies shall submit claims for AHCCCS members for drugs that are identified in the 340B pricing file, whether or not purchased under the 340B pricing file, with the lesser of:
  - a. The actual acquisition cost, or
  - b. The 340B ceiling price.
4. The AHCCCS Fee-for-Service and Managed Care Contractors' PBMs shall reimburse claims for drugs which are identified in the 340B pricing file dispensed by FQHC and FQHC Look -Alike pharmacies, whether or not purchased under the 340B pricing file, at the amount submitted under subsection (C)(3) plus a dispensing fee listed in the AHCCCS Capped Fee-For-Service Schedule unless a contract between the 340B entity and a Managed Care Contractor's PBM specifies a different dispensing fee.
5. Contracted pharmacies shall not submit claims for drugs dispensed under an agreement with the 340B entity as part of the 340B drug pricing program, and the AHCCCS Administration and Managed Care Contractors shall not reimburse such claims.
6. The AHCCCS Administration and Managed Care Contractors shall reimburse contracted pharmacies for drugs not dispensed under an agreement with the 340B entity as part of the 340B program at the price and dispensing fee set forth in the contract between the contracted pharmacy and the AHCCCS or its Managed Care Contractors' PBMs. Neither the Administration nor its Managed Care Contractors will reimburse a contracted pharmacy that does not have a contract with the Administration or MCO's PBM.
7. The AHCCCS Administration and its Managed Care Contractors shall reimburse FQHC and FQHC Look-Alike pharmacies for drugs that are not eligible under the 340B Drug Pricing Program at the price and dispensing fee set forth in their contract with the AHCCCS or its Managed Care Contractors' PBMs.
8. AHCCCS may periodically conduct audits to ensure compliance with this Section.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-710 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of amended rule identical to emergency (Supp. 83-3). Former Section R9-22-710 repealed, new Section R9-22-710 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985. The capped fee-for-service schedules, deleted from Section R9-22-710, are now on file at the central office of the Administration (Supp. 85-5). Amended subsections (B) through (D) effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective July 1, 1988 (Supp. 88-3). Amended subsection (B) effective April 27, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3830, effective

November 12, 2005 (Supp. 05-3). Amended by exempt rulemaking at 18 A.A.R. 212, effective February 1, 2012 (Supp. 12-1). Amended by exempt rulemaking at 18 A.A.R. 1971, effective August 1, 2012 (Supp. 12-3).

Amended by exempt rulemaking at 18 A.A.R. 2630, effective October 1, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 1681, effective August 9, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3525, effective October 18, 2013 (Supp. 13-4)

**R9-22-711. Copayments**

- A. For purposes of this Article:
  1. A copayment is a monetary amount that a member pays directly to a provider at the time a covered service is rendered.
  2. An eligible individual is assigned to a hierarchy established in subsections (B) through (E), for the purposes of establishing a copayment amount.
  3. No refunds shall be made for a retroactive period if there is a change in an individual's status that alters the amount of a copayment.
- B. The following services are exempt from AHCCCS copayments for all members:
  1. Family planning services and supplies,
  2. Services related to a pregnancy or any other medical condition that may complicate the pregnancy, including tobacco cessation treatment for a pregnant woman,
  3. Emergency services as described in 42 CFR 447.56(2)(i),
  4. All services paid on a fee-for-service basis,
  5. Preventive services, such as well visits, immunizations, pap smears, colonoscopies, and mammograms,
  6. Provider preventable services.
- C. The following individuals are exempt from AHCCCS copayments:
  1. An individual under age 19, including individuals eligible for the KidsCare Program in A.R.S. § 36-2982;
  2. An individual determined to be Seriously Mentally Ill (SMI) by the Arizona Department of Health Services;
  3. An individual eligible for the Arizona Long-Term Care Program in A.R.S. § 36-2931;
  4. An individual eligible for QMB under Chapter 29;
  5. An individual eligible for the Children's Rehabilitative Services program under A.R.S. § 36-2906(E);
  6. An individual receiving nursing facility or HCBS services under R9-22-216;
  7. An individual receiving hospice care as defined in 42 U.S.C. 1396d(o);
  8. An American Indian individual enrolled in a health plan and has received services through an IHS facility, tribal 638 facility or urban Indian health program;
  9. An individual eligible in the Breast and Cervical Cancer program as described under Article 20;
  10. An individual who is pregnant and through the postpartum period following the pregnancy;
  11. An individual with respect to whom child welfare services are made available under Part B of Title IV of the Social Security Act on the basis of being a child in foster care, without regard to age;
  12. An individual with respect to whom adoption or foster care assistance is made available under Part E of Title IV of the Social Security Act, without regard to age; and
  13. An adult eligible under R9-22-1427(E), with income at or below 106% of the FPL.
- D. Non-mandatory copayments. Unless otherwise listed in subsection (B) or (C), individuals under subsections (D)(1)

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through (6) are subject to the copayments listed in this subsection. A provider shall not deny a service when a member states to the provider an inability to pay a copayment.

1. A caretaker relative eligible under R9-22-1427(A);
  2. An individual eligible for Young Adult Transitional Insurance (YATI) in A.R.S. § 36-2901(6)(a)(iii);
  3. An individual eligible for State Adoption Assistance in R9-22-1433;
  4. An individual eligible for Supplemental Security Income (SSI);
  5. An individual eligible for SSI Medical Assistance Only (SSI/MAO) in Article 15; and
  6. An individual eligible for the Freedom to Work program in A.R.S. § 36-2901(6)(g).
  7. Copayment amount per service:
    - a. \$2.30 per prescription drug.
    - b. \$3.40 per outpatient visit, excluding an emergency room visit, if any of the services rendered during the visit are coded as evaluation and management services or non-emergent surgical procedures according to the National Standard Code Sets. An outpatient visit includes any setting where these services are performed such as a physician's office, an Ambulatory Surgical Center (ASC), or a clinic.
    - c. \$2.30 per visit, if a copayment is not being imposed under subsection (D)(7)(b) and any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
- E. Mandatory copayments.**
1. Copayments for individuals eligible for Transitional Medical Assistance (TMA) under R9-22-1427(B)(1)(c)(i). Unless otherwise listed in subsection (C), an individual is required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
    - a. \$2.30 per prescription drug.
    - b. \$4.00 per outpatient visit, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
    - c. If a copayment is not being imposed under subsection (E)(1)(b), \$3.00 per visit if any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
    - d. If a copayment is not being imposed under subsection (E)(1)(b) or (c), \$3.00 per visit, if any of the services rendered during the visit are coded as non-emergent surgical procedures according to the National Standard Code Sets.
  2. Copayments for persons eligible under R9-22-1427(E) with income above 106% of the FPL and for persons eligible under A.R.S. §§ 36-2907.10 and 36-2907.11. Subject to CMS approval, unless otherwise listed in subsection (C), these individuals are required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
    - a. \$4.00 per prescription drug.
    - b. \$5.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate from \$50 to less than \$100, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
    - c. \$10.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate of \$100 or greater, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
    - d. If a copayment is not being imposed under subsection (E)(2)(b) or (E)(2)(c), for services coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
      - i. \$2.00 if the rate on the fee schedule is \$20 to \$39.99,
      - ii. \$4.00 if the rate on the fee schedule is \$40 to \$49.99, or
      - iii. \$5.00 if the rate on the fee schedule is \$50 and above per visit.
    - e. If a copayment is not being imposed under subsection (E)(2)(b) – (E)(2)(d), for services coded as non-emergent surgical procedures according to the National Standard Code Sets,
      - i. \$30.00 if the rate on the fee schedule is \$300 to \$499.99, or
      - ii. \$50.00 if the rate on the fee schedule is \$500 and above per visit.
    - f. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$2.00 per trip for non-emergency transportation in an urban area.
    - g. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$8.00 for non-emergency use of the emergency room.
    - h. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$75 for an Inpatient stay.
  3. The provider may deny a service if the member does not pay the copayment required by subsection (E), however, a provider may choose to reduce or waive copayments under this subsection on a case-by-case basis.
- F.** A provider is responsible for collecting any copayment imposed under this Section.
- G.** The total aggregate amount of copayments under subsections (D) or (E) may not exceed 5% of the family's income as applied on a quarterly basis. The member may establish that the aggregate limit has been met on a quarterly basis by providing the Administration with records of copayments incurred during the quarter. In addition, the Administration shall also use claims and encounters information available to the Administration to establish when a member's copayment obligation has reached 5% of the family's income.
- H.** Reduction in payments to providers. The Administration and its contractors shall reduce the payment it makes to any pro-

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vider by the amount of a member's copayment obligation under subsection (E), regardless of whether the provider successfully collects the copayments described in this Section.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Sections R9-22-711 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-711 repealed, new Section R9-22-711 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4).

Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 4557, effective October 1, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 2194, effective May 3, 2004 (Supp. 04-2). Amended by exempt rulemaking at 10 A.A.R. 4266, effective October 1, 2004 (Supp. 04-3). Amended by final rulemaking at 16 A.A.R. 1449, effective October 1, 2010 (Supp. 10-3). Section amended by exempt rulemaking at 18 A.A.R. 461, effective April 1, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 2954, effective November 11, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 128, effective December 30, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3).

*Editor's Note: The following Section was adopted and amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-712. Reimbursement: General**

- A.** Inpatient and outpatient discounts and penalties. If a claim is pending for additional documentation required under A.R.S. § 36-2903.01(G)(4), the period during which the claim is pending is not used in the calculation of the quick-pay discounts and slow-pay penalties under A.R.S. § 36-2903.01(G)(5).
- B.** Inpatient and outpatient in-state or out-of-state hospital payments.
1. Payment for inpatient out-of-state hospital services for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(d).
  2. Payment for inpatient in-state hospital services for claims with discharge dates on or before September 30, 2014. AHCCCS shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on

3. Payment for inpatient in-state or out-of-state hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in the absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
  4. Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse an out-of-state hospital for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the Administration shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.
  5. Outpatient in-state hospital payments. A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other Sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- C.** Access to records. Subcontracting and noncontracting providers of outpatient or inpatient hospital services shall allow the Administration access to medical records regarding eligible persons and shall in all other ways fully cooperate with the Administration or the Administration's designated representative in performance of the Administration's utilization control activities. The Administration shall deny a claim for failure to cooperate.
- D.** Prior authorization. The Administration or contractor may deny a claim if a provider fails to obtain prior authorization as required under R9-22-210.
- E.** Review of claims. Regardless of prior authorization or concurrent review activities, the Administration may subject all hospital claims, including outliers, to prepayment medical review or post-payment review, or both. The Administration shall conduct post-payment reviews consistent with A.R.S. § 36-2903.01 and may recoup erroneously paid claims.
- F.** Claim receipt.
1. The Administration's date of receipt of inpatient or outpatient hospital claims is the date the claim is received by the Administration as indicated by the date stamp on the claim and the system-generated claim reference number or system-generated date-specific number.
  2. Hospital claims are considered paid on the date indicated on disbursement checks.
  3. A denied claim is considered adjudicated on the date the claim is denied.
  4. Claims that are denied and are resubmitted are assigned new receipt dates.
  5. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the Administration shall assign a new date of receipt upon receipt of the additional documentation.

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6. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the Administration shall not assign a new date of receipt.
- G.** Outpatient hospital reimbursement. The Administration shall pay for covered outpatient hospital services provided to eligible persons with dates of service from March 1, 1993 through June 30, 2005, at the AHCCCS outpatient hospital cost-to-charge ratio, multiplied by the amount of the covered charges.
1. Computation of outpatient hospital reimbursement. The Administration shall compute the cost-to-charge ratio on a hospital-specific basis by determining the covered charges and costs associated with treating eligible persons in an outpatient setting at each hospital. Outpatient operating and capital costs are included in the computation but outpatient medical education costs that are included in the inpatient medical education component are excluded. To calculate the outpatient hospital cost-to-charge ratio annually for each hospital, the Administration shall use each hospital's Medicare Cost Reports and a database consisting of outpatient hospital claims paid and encounters processed by the Administration for each hospital, subjecting both to the data requirements specified in R9-22-712.01. The Administration shall use the following methodology to establish the outpatient hospital cost-to-charge ratios:
    - a. Cost-to-charge ratios. The Administration shall calculate the costs of the claims and encounters for outpatient hospital services by multiplying the ancillary line item cost-to-charge ratios by the covered charges for corresponding revenue codes on the claims and encounters. Each hospital shall provide the Administration with information on how the revenue codes used by the hospital to categorize charges on claims and encounters correspond to the ancillary line items on the hospital's Medicare Cost Report. The Administration shall then compute the overall outpatient hospital cost-to-charge ratio for each hospital by taking the average of the ancillary line items cost-to-charge ratios for each revenue code weighted by the covered charges.
    - b. Cost-to-charge limit. To comply with 42 CFR 447.325, the Administration may limit cost-to-charge ratios to 1.00 for each ancillary line item from the Medicare Cost Report. The Administration shall remove ancillary line items that are non-covered or not applicable to outpatient hospital services from the Medicare Cost Report data for purposes of computing the overall outpatient hospital cost-to-charge ratio.
  2. New hospitals. The Administration shall reimburse new hospitals at the weighted statewide average outpatient hospital cost-to-charge ratio multiplied by covered charges. The Administration shall continue to use the statewide average outpatient hospital cost-to-charge ratio for a new hospital until the Administration rebases the outpatient hospital cost-to-charge ratios and the new hospital has a Medicare Cost Report for the fiscal year being used in the rebasing.
  3. Specialty outpatient services. The Administration may negotiate, at any time, reimbursement rates for outpatient hospital services in a specialty facility.
  4. Reimbursement requirements. To receive payment from the Administration, a hospital shall submit claims that are legible, accurate, error free, and have a covered charge greater than zero. The Administration shall not reimburse hospitals for emergency room treatment, observation hours or days, or other outpatient hospital services performed on an outpatient basis, if the eligible person is admitted as an inpatient to the same hospital directly from the emergency room, observation area, or other outpatient department. Services provided in the emergency room, observation area, and other outpatient hospital services provided before the hospital admission are included in the tiered per diem payment.
  5. Rebasing. The Administration shall rebase the outpatient hospital cost-to-charge ratios at least every four years but no more than once a year using updated Medicare Cost Reports and claim and encounter data.
  6. If a hospital files an increase in its charge master for an existing outpatient service provided on or after July 1, 2004, and on or before June 30, 2005, which represents an aggregate increase in charges of more than 4.7%, the Administration shall adjust the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) by applying the following formula:  

$$CCR * [1.047 / (1 + \% \text{ increase})]$$
 Where "CCR" means the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) and "% increase" means the aggregate percentage increase in charges for outpatient services shown on the hospital charge master.  
 "Charge master" means the schedule of rates and charges as described under A.R.S. § 36-436 and the rules that relate to those rates and charges that are filed with the Director of the Arizona Department of Health Services.

**Historical Note**

Adopted as an emergency effective February 23, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to emergency (Supp. 83-3). Former Section R9-22-712 repealed, new Section R9-22-712 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-712 renumbered and amended as Section R9-22-1001 effective October 1, 1985 (Supp. 85-5). New Section R9-22-712 adopted under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective January 14, 1997 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 3831, effective August 25, 2004 (Supp. 04-3). Amended by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.01. Inpatient Hospital Reimbursement for**

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**claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014**

Inpatient hospital reimbursement. The Administration shall pay for covered inpatient acute care hospital services provided to eligible persons for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014, on a prospective reimbursement basis. The prospective rates represent payment in full, excluding quick-pay discounts, slow-pay penalties, and third-party payments for both accommodation and ancillary department services. The rates include reimbursement for operating and capital costs. The Administration shall make reimbursement for direct graduate medical education as described in A.R.S. § 36-2903.01. For payment purposes, the Administration shall classify each AHCCCS inpatient hospital day of care into one of several tiers appropriate to the services rendered. The rate for a tier is referred to as the tiered per diem rate of reimbursement. The number of tiers is seven and the maximum number of tiers payable per continuous stay is two. Payment of outlier claims, transplant claims, or payment to out-of-state hospitals, freestanding psychiatric hospitals, and other specialty facilities may differ from the inpatient hospital tiered per diem rates of reimbursement described in this Section.

1. Tier rate data. The Administration shall base tiered per diem rates effective on and after October 1, 1998 on Medicare Cost Reports for Arizona hospitals for the fiscal year ending in 1996 and a database consisting of inpatient hospital claims and encounters for dates of service matching each hospital's 1996 fiscal year end.
  - a. Medicare Cost Report data. Because Medicare Cost Report years are not standard among hospitals and were not audited at the time of the rate calculation, the Administration shall inflate all the costs to a common point in time as described in subsection (2) for each component of the tiered per diem rates. The Administration shall not make any changes to the tiered per diem rates if the Medicare Cost Report data are subsequently updated or adjusted. If a single Medicare Cost Report is filed for more than one hospital, the Administration shall allocate the costs to each of the respective hospitals. A hospital shall submit information to assist the Administration in this allocation.
  - b. Claim and encounter data. For the database, the Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were accepted and processed by the Administration at the time the database was developed for rates effective on and after October 1, 1998. The Administration shall subject the claim and encounter data to a series of data quality, reasonableness, and integrity edits and shall exclude from the database or adjust claims and encounters that fail these edits. The Administration shall also exclude from the database the following claims and encounters:
    - i. Those missing information necessary for the rate calculation,
    - ii. Medicare crossovers,
    - iii. Those submitted by freestanding psychiatric hospitals, and
    - iv. Those for transplant services or any other hospital service that the Administration would pay on a basis other than the tiered per diem rate.
2. Tier rate components. The Administration shall establish inpatient hospital prospective tiered per diem rates based on the sum of the operating and capital components. The

rate for the operating component is a statewide rate for each tier except for the NICU and Routine tiers, which are based on peer groups. The rate for the capital component is a blend of statewide and hospital-specific values, as described in A.R.S. § 36-2903.01. The Administration shall use the following methodologies to establish the rates for each of these components.

- a. Operating component. Using the Medicare Cost Reports and the claim and encounter database, the Administration shall compute the rate for the operating component as follows:
  - i. Data preparation. The Administration shall identify and group into department categories, the Medicare Cost Report data that provide ancillary department cost-to-charge ratios and accommodation costs per day. To comply with 42 CFR 447.271, the Administration shall limit cost-to-charge ratios to 1.00 for each ancillary department.
  - ii. Operating cost calculation. To calculate the rate for the operating component, the Administration shall derive the operating costs from claims and encounters by combining the Medicare Cost Report data and the claim and encounter database for all hospitals. In performing this calculation, the Administration shall match the revenue codes on the claims and encounters to the departments in which the line items on the Medicare Cost Reports are grouped. The ancillary department cost-to-charge ratios for a particular hospital are multiplied by the covered ancillary department charges on each of the hospital's claims and encounters. The AHCCCS inpatient days of care on the particular hospital's claims and encounters are multiplied by the corresponding accommodation costs per day from the hospital's Medicare Cost Report. The ancillary cost-to-charge ratios and accommodation costs per day do not include medical education and capital costs. The Administration shall inflate the resulting operating costs for the claims and encounters of each hospital to a common point in time, December 31, 1996, using the DRI inflation factor and shall reduce the operating costs for the hospital by an audit adjustment factor based on available national data and Arizona historical experience in adjustments to Medicare reimbursable costs. The Administration shall further inflate operating costs to the midpoint of the rate year (March 31, 1999).
  - iii. Operating cost tier assignment. After calculating the operating costs, the Administration shall assign the claims and encounters used in the calculation to tiers based on diagnosis, procedure, or revenue codes, or NICU classification level, or a combination of these. For the NICU tier, the Administration shall further assign claims and encounters to NICU Level II or NICU Level III peer groups, based on the hospital's certification by the Arizona Perinatal Trust. For the Routine tier, the Administration shall further assign claims and encounters to the general acute care hospital or rehabilitation

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- hospital peer groups, based on state licensure by the Department of Health Services. For claims and encounters assigned to more than one tier, the Administration shall allocate ancillary department costs to the tiers in the same proportion as the accommodation costs. Before calculating the rate for the operating component, the Administration shall identify and exclude any claims and encounters that are outliers as defined in subsection (6).
- iv. Operating rate calculation. The Administration shall set the rate for the operating component for each tier by dividing total statewide or peer group hospital costs identified in this subsection within the tier by the total number of AHCCCS inpatient hospital days of care reflected in the claim and encounter database for that tier.
  - b. Capital component. For rates effective October 1, 1999 the capital component is calculated as described in A.R.S. § 36-2903.01.
  - c. Statewide inpatient hospital cost-to-charge ratio. For dates of service prior to October 1, 2007, the statewide inpatient hospital cost-to-charge ratio is used for payment of outliers, as described in subsections (4), (5), and (6), and out-of-state hospitals, as described in R9-22-712(B). The Administration shall calculate the AHCCCS statewide inpatient hospital cost-to-charge ratio by using the Medicare Cost Report data and claim and encounter database described in subsection (1) and used to determine the tiered per diem rates. For each hospital, the covered inpatient days of care on the claims and encounters are multiplied by the corresponding accommodation costs per day from the Medicare Cost Report. Similarly, the covered ancillary department charges on the claims and encounters are multiplied by the ancillary department cost-to-charge ratios. The accommodation costs per day and the ancillary department cost-to-charge ratios for each hospital are determined in the same way described in subsection (2)(a) but include costs for operating and capital. The Administration shall then calculate the statewide inpatient hospital cost-to-charge ratio by summing the covered accommodation costs and ancillary department costs from the claims and encounters for all hospitals and dividing by the sum of the total covered charges for these services for all hospitals.
  - d. Unassigned tiered per diem rates. If a hospital has an insufficient number of claims to set a tiered per diem rate, the Administration shall pay that hospital the statewide average rate for that tier.
3. Tier assignment. The Administration shall assign AHCCCS inpatient hospital days of care to tiers based on information submitted on the inpatient hospital claim or encounter including diagnosis, procedure, or revenue codes, peer group, NICU classification level, or a combination of these.
    - a. Tier hierarchy. In assigning claims for AHCCCS inpatient hospital days of care to a tier, the Administration shall follow the Hierarchy for Tier Assignment through September 30, 2014 in R9-22-712.09. The Administration shall not pay a claim for inpatient hospital services unless the claim meets medical review criteria and the definition of a clean claim. The Administration shall not pay for a hospital stay on the basis of more than two tiers, regardless of the number of interim claims that are submitted by the hospital.
    - b. Tier exclusions. The Administration shall not assign to a tier or pay AHCCCS inpatient hospital days of care that do not occur during a period when the person is eligible. Except in the case of death, the Administration shall pay claims in which the day of admission and the day of discharge are the same, termed a same day admit and discharge, including same day transfers, as an outpatient hospital claim. The Administration shall pay same day admit and discharge claims that qualify for either the maternity or nursery tiers based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
    - c. Seven tiers. The seven tiers are:
      - i. Maternity. The Administration shall identify the Maternity Tier by a primary diagnosis code. If a claim has an appropriate primary diagnosis, the Administration shall pay the AHCCCS inpatient hospital days of care on the claim at the maternity tiered per diem rate.
      - ii. NICU. The Administration shall identify the NICU Tier by a revenue code. A hospital does not qualify for the NICU tiered per diem rate unless the hospital is classified as either a NICU Level II or NICU Level III perinatal center by the Arizona Perinatal Trust. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meet the medical review criteria for the NICU tier and have a NICU revenue code at the NICU tiered per diem rate. The Administration shall pay any remaining AHCCCS inpatient hospital day on the claim that does not meet NICU Level II or NICU Level III medical review criteria at the nursery tiered per diem rate.
      - iii. ICU. The Administration shall identify the ICU Tier by a revenue code. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meets the medical review criteria for the ICU tier and has an ICU revenue code at the ICU tiered per diem rate. The Administration may classify any AHCCCS inpatient hospital days on the claim without an ICU revenue code, as surgery, psychiatric, or routine tiers.
      - iv. Surgery. The Administration shall identify the Surgery Tier by a revenue code and a valid surgical procedure code that is not on the AHCCCS excluded surgical procedure list. The excluded surgical procedure list identifies minor procedures such as sutures that do not require the same hospital resources as other procedures. The Administration shall only split a surgery tier with an ICU tier. AHCCCS shall pay at the surgery tier rate only when the surgery occurs on a date during which the member is eligible.
      - v. Psychiatric. The Administration shall identify the Psychiatric Tier by either a psychiatric rev-

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- enue code and a psychiatric diagnosis or any routine revenue code if all diagnosis codes on the claim are psychiatric. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the psychiatric tier with any tier other than the ICU tier.
- vi. Nursery. The Administration shall identify the Nursery Tier by a revenue code. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the nursery tier with any tier other than the NICU tier.
  - vii. Routine. The Administration shall identify the Routine Tier by revenue codes. The routine tier includes AHCCCS inpatient hospital days of care that are not classified in another tier or paid under any other provision of this Section. The Administration shall not split the routine tier with any tier other than the ICU tier.
4. Annual update. The Administration shall annually update the inpatient hospital tiered per diem rates through September 30, 2011.
  5. New hospitals. For rates effective on and after October 1, 1998, the Administration shall pay new hospitals the statewide average rate for each tier, as appropriate. The Administration shall update new hospital tiered per diem rates through September 30, 2011.
  6. Outliers. The Administration shall reimburse hospitals for AHCCCS inpatient hospital days of care identified as outliers under this Section by multiplying the covered charges on a claim by the Medicare Urban or Rural Cost-to-Charge Ratio. The Urban cost-to-charge ratio will be used for hospitals located in a county of 500,000 residents or more. The Rural cost-to-charge ratio will be used for hospitals located in a county of fewer than 500,000 residents.
    - a. Outlier criteria. For rates effective on and after October 1, 1998, the Administration set the statewide outlier cost threshold for each tier at the greater of three standard deviations from the statewide mean operating cost per day within the tier, or two standard deviations from the statewide mean operating cost per day across all the tiers. If the covered costs per day on a claim exceed the urban or rural cost threshold for a tier, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the applicable Medicare Urban or Rural CCR. The resulting amount will be the outlier payment. If there are two tiers on a claim, the Administration shall determine whether the claim is an outlier by using a weighted threshold for the two tiers. The weighted threshold is calculated by multiplying each tier rate by the number of AHCCCS inpatient hospital days of care for that tier and dividing the product by the total tier days for that hospital. Routine maternity stays shall be excluded from outlier reimbursement. A routine maternity is any one-day stay with a delivery of one or two babies. A routine maternity stay will be paid at tier.
    - b. Update. The CCR is updated annually by the Administration for dates of service beginning October 1, using the most current Medicare cost-to-charge ratios published or placed on display by CMS by August 31 of that year. The Administration shall update the outlier cost thresholds for each hospital through September 30, 2011 as described under A.R.S. § 36-2903.01. For inpatient hospital admissions with begin dates of service on and after October 1, 2011, AHCCCS will increase the outlier cost thresholds by 5% of the thresholds that were effective on September 30, 2011.
  - c. Medicare Cost-to-Charge Ratio Phase-In. AHCCCS shall phase in the use of the Medicare Urban or Rural Cost-to-Charge Ratios for outlier determination, calculation and payment. The three-year phase-in does not apply to out-of-state or new hospitals.
    - i. Medicare Cost-to-Charge Ratio Phase-In outlier determination and threshold calculation. For outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. For outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. The adjusted hospital specific inpatient cost-to-charge ratios shall be used for all calculations using the Medicare Urban or Rural Cost-to-Charge Ratios, including outlier determination, and threshold calculation.
    - ii. Medicare Cost-to-Charge Ratio Phase-In calculation for payment. For payment of outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio. For payment of outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio.
    - iii. Medicare Cost-to-Charge Ratio for outlier determination, threshold calculation, and payment. For outlier claims with dates of service on or after October 1, 2009, the full Medicare Urban or Rural Cost-to-Charge Ratios shall be utilized for all outlier calculations.
  - d. Cost-to-Charge Ratio used for qualification and payment of outlier claims.
    - i. For qualification and payment of outlier claims with begin dates of service on or after April 1, 2011 through September 30, 2011, the CCR

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- will be equal to 95% of the ratios in effect on October 1, 2010.
- ii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011, the CCR will be equal to 90.25% of the most recent published Urban or Rural Medicare CCR as described in subsection (6)(b).
  - iii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011 through September 30, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after April 1, 2011 by an additional percentage equal to the total percent increase reported on the charge master.
  - iv. Subject to approval by CMS, for qualification and payment of outlier claims with begin dates of service on or after October 1, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after June 1, 2012 by an additional percentage equal to the total percent increase reported on the charge master.
7. Transplants. The Administration shall reimburse hospitals for an AHCCCS inpatient stay in which a covered transplant as described in R9-22-206 is performed through the terms of the relevant contract. If the Administration and a hospital that performs transplant surgery on an eligible person do not have a contract for the transplant surgery, the Administration shall not reimburse the hospital more than what would have been paid to the contracted hospital for that same surgery.
  8. Ownership change. The Administration shall not change any of the components of a hospital's tiered per diem rates upon an ownership change.
  9. Psychiatric hospitals. The Administration shall pay free-standing psychiatric hospitals an all-inclusive per diem rate based on the contracted rates used by the Department of Health Services.
  10. Specialty facilities. The Administration may negotiate, at any time, reimbursement rates for inpatient specialty facilities or inpatient hospital services not otherwise addressed in this Section as provided by A.R.S. § 36-2903.01. For purposes of this subsection, "specialty facility" means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.
  11. Outliers for new hospitals. Outliers for new hospitals will be calculated using the Medicare Urban or Rural Cost-to-Charge Ratio times covered charges. If the resulting cost is equal to or above the cost threshold, the claim will be paid at the Medicare Urban or Rural Cost-to-Charge ratio.
  12. Reductions to tiered per diem payment for inpatient hospital services. Inpatient hospital admissions with begin dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the tiered per diem rates in effect on September 30, 2011.
- ing at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.02. Reserved**

**R9-22-712.03. Reserved**

**R9-22-712.04. Reserved**

**R9-22-712.05. Graduate Medical Education Fund Allocation**

**A.** Graduate medical education (GME) reimbursement as of September 30, 1997. Subject to legislative appropriation, the Administration shall make a distribution based on direct graduate medical education costs as described in A.R.S. § 36-2903.01(G)(9)(a).

**B.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(b). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (B)(3).

1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (B) if all of the following apply:

- a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
- b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital's Medicare Cost Report;
- c. It is not administered by or does not receive its primary funding from an agency of the federal government.

2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (B)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):

- a. Filled resident positions in approved programs established as of October 1, 1999 at hospitals that receive funding as described in A.R.S. § 36-2903.01(G)(9)(a) that are additional to the number of resident positions that were filled as of October 1, 1999; and
- b. All filled resident positions in approved programs other than GME programs described in A.R.S. § 36-2903.01(G)(9)(a) that were established before July 1, 2006.

3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (B) shall provide the applicable information listed in this subsection to the Administration:

- a. A GME program shall provide all of the following:
  - i. The program name and number assigned by the accrediting organization;
  - ii. The original date of accreditation;

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemak-

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- iii. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
  - iv. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
  - v. For programs established as of October 1, 1999, the number of resident positions that were filled as of October 1, 1999, if the program has not already provided this information to the Administration;
- b. A hospital seeking a distribution under subsection (B) shall provide all of the following that apply:
- i. If the hospital uses the Intern and Resident Information System (IRIS) for tracking and reporting its resident activity to the fiscal intermediary, copies of the IRIS master and assignment files for the hospital's two most recently completed Medicare cost reporting years as filed with the fiscal intermediary;
  - ii. If the hospital does not use the IRIS or has less than two cost reporting years available in the form of the IRIS master and assignment files, the information normally contained in the IRIS master and assignment files in an alternative format for the hospital's two most recently completed Medicare cost reporting years;
  - iii. At the request of the Administration, a copy of the hospital's Medicare Cost Report or any part of the report for the most recently completed cost reporting year.
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to each approved GME program in the following manner:
- a. Information provided by hospitals under subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided under subsections (B)(3)(b)(i) and (ii).
  - b. The number of eligible residents allocated to each participating institution within each approved GME program shall be determined as follows:
    - i. Total the number of days determined for each participating institution under subsection (B)(4)(a) and divide each total by 365.
    - ii. Proportionally adjust the result of subsection (B)(4)(b)(i) for each participating institution within each program according to the number of residents determined to be eligible under subsection (B)(2).
  - c. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) shall be adjusted for Arizona Medicaid utilization using the most recent Medicare Cost Report information on file with the Administration as of the date of reporting under subsection (B)(3) and the Administration's inpatient hospital claims and encounter data for the time period corresponding to the Medicare Cost Report information for each hospital. The Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were adjudicated by the Administration as of the date of reporting under subsection (B)(3). The Medicaid-adjusted eligible residents shall be determined as follows:
    - i. For each hospital, the total AHCCCS inpatient hospital days of care shall be divided by the total Medicare Cost Report inpatient hospital days, multiplied by 100 and rounded up to the nearest multiple of 5 percent.
    - ii. The number of allocated eligible residents determined for each participating hospital under subsection (B)(4)(b)(ii) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for that hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is not a hospital and not a health care facility made ineligible under subsection (B)(1)(c) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for the program's sponsoring institution or, if the sponsoring institution is not a hospital, the sponsoring institution's affiliated hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is made ineligible under subsection (B)(1)(c) shall be multiplied by zero percent.
  - d. The total allocation for each approved program shall be determined by multiplying the Medicaid-adjusted eligible residents determined under subsection (B)(4)(c)(ii) by the per-resident conversion factor determined below and totaling the resulting dollar amounts for all participating institutions in the program. The per-resident conversion factor shall be determined as follows:
    - i. Calculate the total direct GME costs from the most recent Medicare Cost Reports on file with the Administration for all hospitals that have reported such costs.
    - ii. Calculate the total allocated residents determined under subsection (B)(4)(b)(i) for those hospitals described under subsection (B)(4)(d)(i).
    - iii. Divide the total GME costs calculated under subsection (B)(4)(d)(i) by the total allocated residents calculated under subsection (B)(4)(d)(ii).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (B)(4) in the following manner:
- a. The allocated amounts shall be distributed in the following order of priority:
    - i. To eligible hospitals that do not receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
    - ii. To eligible hospitals that receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;

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- b. The allocated amounts shall be distributed to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each hospital within that program under subsection (B)(4)(c)(ii).
- c. If funds are insufficient to cover all distributions within any priority group described under subsection (B)(5)(a), the Administration shall adjust the distributions proportionally within that priority group.
- C. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(i). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (C)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (C) if it meets all the conditions of subsections (B)(1)(a) through (c).
  2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (C)(4), the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
    - a. All filled resident positions in approved programs established on or after July 1, 2006; and
    - b. For approved programs established on or after July 1, 2006 that have been established for less than one year as of the date of reporting under subsection (C)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.
  3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (C) shall provide to the Administration:
    - a. A GME program shall provide all of the following:
      - i. The requirements of subsections (B)(3)(a)(i) through (iv);
      - ii. The academic year rotation schedule on file with the program current as of the date of reporting; and
      - iii. For programs described under subsection (C)(2)(b), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
    - b. A hospital seeking a distribution under subsection (C) shall provide the requirements of subsection (B)(3)(b).
  4. Allocation of expansion funds. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
    - a. Information provided by hospitals in accordance with subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided in accordance with subsections (B)(3)(b)(i) and (ii).
- b. For approved programs whose resident activity is not represented in the information provided in accordance with subsection (B)(3)(b), information provided by GME programs under subsection (C)(3)(a) shall be used to determine the number of days that each eligible resident is expected to work at each participating institution.
- c. The number of eligible residents allocated to each participating institution for each approved GME program shall be determined by totaling the number of days determined under subsections (C)(4)(a) and (b) and dividing the totals by 365.
- d. The number of allocated residents determined under subsection (C)(4)(c) shall be adjusted for Arizona Medicaid utilization in accordance with subsection (B)(4)(c).
- e. The total allocation for each approved program shall be determined in accordance with subsection (B)(4)(d).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (C)(4) to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each within that program under subsection (C)(4)(d).
- D. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for GME programs approved by the Administration to hospitals for indirect program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(ii). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (D) if all of the following apply:
    - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona or is the base hospital for one or more of the GME programs in Arizona whose sponsoring institutions are not hospitals;
    - b. It incurs indirect program costs for the training of residents in the GME programs, which are or will be calculated on the hospital's Medicare Cost Report or are reimbursable under the Children's Hospitals Graduate Medical Education Payment Program administered by HRSA;
    - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
  2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (D)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (D)(1)(c):

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- a. Any filled resident position in an approved program that includes a rotation of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule;
  - b. For approved programs that have been established for less than one year as of the date of reporting under subsection (D)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match who will perform rotations of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (D) shall provide to the Administration:
    - a. A GME program shall provide all of the following:
      - i. The requirements of subsections (B)(3)(a)(i) through (iv);
      - ii. The academic year rotation schedule on file with the program current as of the date of reporting;
      - iii. For programs described under subsection (D)(2)(c), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
    - b. A hospital seeking a distribution under subsection (D) shall provide the requirements of subsection (B)(3)(b)(iii).
  4. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
    - a. Using the information provided by programs under subsection (D)(3), the Administration shall determine for each program the number of residents in the program who are eligible under subsection (D)(2) and the number of months per year that each eligible resident will perform rotations in counties described by subsection (D)(2), multiply the number of eligible residents by the number of months and multiply the result by the per resident per month conversion factor determined under subsection (D)(4)(b).
    - b. Using the most recent Medicare Cost Reports on file with the Administration for all hospitals that have calculated a Medicare indirect medical education payment, the Administration shall determine a per resident per month conversion factor as follows:
      - i. Calculate each hospital's Medicare share by dividing the Medicare inpatient discharges on the Medicare Cost Report by the total inpatient hospital discharges on the Medicare Cost Report.
      - ii. Calculate the ratio of residents to beds by dividing the total allocated residents described in subsection (B)(4)(d)(ii) by the number of bed days available from the Medicare Cost Report and dividing the result by the number of days in the cost reporting period.
      - iii. Calculate the indirect medical education adjustment factor by adding 1 to the value calculated in (D)(4)(b)(ii), multiplying the result by the exponential value 0.405, subtracting 1 from the result, and multiplying that result by 1.35.
      - iv. Calculate each hospital's total indirect medical education cost by adding the DRG amounts other than outlier payments from the Medicare cost report and the managed care simulated payments from the Medicare Cost Report, multiplying the total by the indirect medical education adjustment factor determined in (D)(4)(b)(iii) and dividing the result by the Medicare share determined in (D)(4)(b)(i).
      - v. Calculate each hospital's Medicaid indirect medical education cost by multiplying the amount determined in (D)(4)(b)(iv) by the value determined in subsection (B)(4)(c)(i).
      - vi. Total the amounts determined in (D)(4)(b)(v) for all hospitals, divide the result by the total allocated residents described in subsection (B)(4)(d)(ii) for all hospitals, and divide that result by 12.
  5. Distribution of funds for indirect program costs. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the amount calculated for the hospital at subsection (D)(4)(a).
- E. Reallocation of funds. If funds appropriated for subsection (B) are not allocated by the Administration and funds appropriated for subsections (C) and (D) are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the funds not allocated under subsection (B) shall be allocated under subsections (C) and (D) to the extent of the calculated distributions. If funds are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the Administration shall adjust the distributions proportionally. If funds appropriated for subsections (C) and (D) are not allocated by the Administration and funds appropriated for subsection (B) are insufficient to cover all distributions under subsection (B)(5), the funds not allocated under subsections (C) and (D) shall be allocated under subsection (B) to the extent of the calculated distributions.
  - F. The Administration may enter into intergovernmental agreements with local, county, and tribal governments wherein local, county and tribal governments may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will be used to qualify for additional federal funds. Those funds will be used for the purposes of reimbursing hospitals that are eligible under subsection (D)(1) and specified by the local, county, or tribal government for indirect program costs other than those reimbursed under subsection (D). The Administration shall allocate available funds in accordance with subsection (D) except that reimbursement with such funds is not limited to resident positions or rotations in counties with populations of less than 500,000 persons. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the greatest among the following amounts, less any amounts distributed under subsection (D)(5):
    1. The amount that results from multiplying the total number of eligible residents allocated to the hospital under subsection (B)(4)(d)(ii) by 12 by the per resident per month conversion factor determined under subsection (D)(4)(b);

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2. The amount calculated for the hospital at subsection (D)(4)(b)(v);
3. The median of all amounts calculated at subsection (D)(4)(b)(v) if the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report because it is a new training hospital; or
4. If the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report because it is a children's hospital, the median Medicaid indirect medical education payment costs shall be calculated as follows:
  - a. For each hospital with indirect medical education costs on the Medicare Cost Report, determine a per resident total indirect medical education cost by dividing the total indirect medical education costs determined under subsection (D)(4)(b) by the number of filled resident positions under subsection (B)(2).
  - b. Determine the median per resident amount under subsection (F)(4)(a).
  - c. For each hospital without an indirect medical education component on the Medicare cost report, multiply the median per resident amount under subsection (F)(4)(b) by the number of filled resident positions under subsection (B)(2) for that hospital and by the Medicaid utilization percent for that hospital determined in subsection (B)(4)(c)(i).
5. It is not administered by or does not receive its primary funding from an agency of the federal government;
6. It has established a new GME program or expanded the number of residents or fellows in an existing GME program on or after July 1, 2020.
3. Eligible positions. For purposes of determining distributions under this Section the following resident and fellowship positions qualify to the extent that the training takes place in Arizona at an eligible health care facility:
  - a. Filled resident or fellow positions in approved programs which began on or after July 1, 2020;
  - b. Eligible positions do not include residents or fellows that receive payments for services under the Access to Professional Services Initiative (APSI) program established in the Contractors' prepaid capitation contracts with the Administration.
4. Annual Reporting
  - a. By December 15 of each year, a GME program shall provide all of the following information for GME programs and positions which are expected to be eligible for funding under this Section as of the upcoming academic year (i.e., July 1 to June 30 of each year):
    - i. The program name and number assigned by the accrediting organization if available;
    - ii. The original date of accreditation if available;
    - iii. The names of the sponsoring institution and all participating institutions expected as of the date of reporting;
    - iv. The number of anticipated resident and fellowship positions eligible for funding as of the upcoming academic year;
    - v. The number of months or partial months during the upcoming academic year that each resident or fellow is expected to work in each hospital or in a non-hospital setting under agreement between the non-hospital setting and the reporting hospital;
    - vi. The academic year of anticipated resident and fellowship positions;
    - vii. The length of the program; and
    - viii. The names and other information requested by AHCCCS to ensure the total GME distributions for each eligible position are not greater than the costs for each eligible position in the Intern and Resident Information System (IRIS) file.
  - b. By December 15 of each year, a GME program located in a county with a population of less than 500,000 persons shall provide the estimated one-time and ongoing costs for each program which it expects to be eligible for funding.
  - c. By September 1 of each year, a GME program shall provide the actual name of residents and fellows hired in the current academic year and other information requested by AHCCCS to ensure that total GME distributions for the eligible position are not greater than the costs for each eligible position in the IRIS file.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 21 A.A.R. 3469, effective January 30, 2016 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 185, effective January 9, 2018 (Supp. 18-1). Amended by final rulemaking at 24 A.A.R. 3321, effective January 5, 2019 (Supp. 18-4).

**R9-22-712.06. Supplemental Graduate Medical Education Fund Allocation**

- A. Gradual Medical Education (GME) reimbursement as of July 1, 2020.
  1. In addition to distributions according to Section R9-22-712.05, and subject to the availability of funds and approval by CMS, the Administration shall annually distribute monies appropriated for the GME programs approved by the Administration to hospitals for direct and indirect costs for graduate medical education programs which were established or expanded on or after July 1, 2020. The Administration shall estimate the distributions using information possessed by the Administration as of December 15 of each calendar year. The actual distributions will be made using information possessed by the Administration as of September first of the year in which the new residency or fellowship begins.
  2. Eligible Hospitals. A hospital is eligible for distributions under this Section if all of the following apply:
    - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
    - b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital's Medicare Cost Report;

- B. Preliminary allocation of funds for urban hospitals. Annually by January 15, the Administration shall estimate the annual GME distributions under this Section using the funds appropriated for hospitals in counties with a populations of 500,000 persons or more based on the number of new residents and fel-

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lows in graduate medical education programs in the following manner:

1. Each eligible resident and fellow is placed into tiers with the following priority:
    - a. Returning residents and fellows. A returning resident or fellow is a resident or fellow whose position received funding under this Section for the previous academic year and who is continuing in the same GME program.
    - b. Residents and fellows that are not a returning resident or fellow but are in a GME program for Family Medicine, Internal Medicine, General Pediatrics, Obstetrics and Gynecology, Psychiatry including Subspecialties, General Surgery, and any other program determined as high needs by the AHCCCS Administration.
    - c. Residents or fellows that are not returning residents or fellows and are not described in subsection (1)(b) but are in a GME program that received funding under this Section in a prior year.
    - d. All other residents and fellows.
  2. Residents and fellows in each tier are further divided into four sub-tiers with the following priority based on the location of the sponsoring or participating hospital:
    - a. Hospitals in a county designated by the Health Resource and Services Administration of the U.S. Department of Health & Human Services as a health professional shortage area (HPSA) with a greater than 85 percent primary care shortage.
    - b. Hospitals in a county designated as a HPSA with a greater than 50 percent to 85 percent primary care shortage.
    - c. Hospitals in a county designated as a HPSA with a 25-50 percent primary care shortage.
    - d. Hospitals in a county designated as a HPSA with a less than 25 percent primary care shortage.
  3. The amount of the distribution for each GME program for direct costs is calculated as the product of:
    - a. The number of eligible residents and fellows adjusted for the number of months or partial months worked in each hospital or non-hospital setting under agreement between the non-hospital setting and the reporting hospitals;
    - b. The Arizona Medicaid utilization as determined by R9-22-712.05(B)(4)(c)(i) in the previous calendar year; and,
    - c. The average direct cost per resident determined under R9-22-712.05(B)(4)(d) in the previous calendar year.
  4. If monies are still remaining after direct funding has been allocated, indirect funding shall be allocated based on the priority of each tier and sub-tier. The amount of the distribution for each GME program for indirect costs is calculated as the product of:
    - a. The number of allocated eligible residents and fellows adjusted for the number of months or partial months worked in each hospital or non-hospital setting under agreement between the non-hospital setting and the reporting hospital;
    - b. The indirect cost per resident per month calculated in R9-22-712.05(D)(4)(b)(vi) in the previous calendar year; and
    - c. Twelve months.
  - d. Funds shall be allocated based on the priority of each tier and sub-tier. Distributions for eligible positions in a tier or sub-tier with a lower priority will not receive a distribution until distributions are allocated for the costs of all positions in a higher tier or sub-tier. If funding is insufficient to fully fund a tier or sub-tier, the remainder of funds will be prorated for eligible positions in that tier or sub-tier.
  5. Payments are made to participating hospitals based on the FTEs who worked at their hospitals per year.
- C. Preliminary allocation of funds for rural hospitals. Annually by January 15, the Administration shall estimate the annual GME distributions under this Section using the funds appropriated for rural hospitals based on the number of eligible resident and fellow positions in graduate medical education programs located in a county with a population of less than 500,000 persons in the following manner:
1. Each resident and fellow will then be placed into a tier with the following priority:
    - a. Returning residents and fellows. A returning resident or fellow is a resident or fellow whose position received funding under this Section for the previous academic year and who is continuing in the same GME program.
    - b. Residents and fellows that are not a returning resident or fellow but are in a GME program for Family Medicine, Internal Medicine, General Pediatrics, Obstetrics and Gynecology, Psychiatry including Subspecialties, General Surgery, and any other program determined as high needs by the AHCCCS Administration.
    - c. Residents or fellows that are not returning residents or fellows and are not described in subsection (1)(b) but are in a GME program that received funding under this Section in a prior year.
    - d. All other residents and fellows.
  2. Residents and fellows in each tier are further divided into four sub-tiers with the following priority based on the location of the sponsoring or participating hospital:
    - a. Hospitals in a county designated by the Health Resource and Services Administration of the U.S. Department of Health & Human Services as a HPSA with a greater than 85 percent primary care shortage.
    - b. Hospitals in a county designated as a HPSA with a greater than 50 percent to 85 percent primary care shortage.
    - c. Hospitals in a county designated as a HPSA with a 25-50 percent primary care shortage.
    - d. Hospitals in a county designated as a HPSA with a less than 25 percent primary care shortage.
  3. Funds shall first be allocated for direct and indirect costs based in order of priority of each tier. If not enough funding is available to fully fund a tier or sub-tier, the remainder of funds will be prorated in a tier or sub-tier.
  4. The amount of the distribution for each GME program for direct costs is calculated as the product of:
    - a. The number of eligible residents and fellows adjusted for the number of months or partial months worked in each hospital or non-hospital setting under agreement between the non-hospital setting and the reporting hospitals;
    - b. The Arizona Medicaid utilization determined under R9-22-712.05(B)(4)(c)(i); and,
    - c. The actual direct cost per resident per year.

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5. The amount of the distribution for each GME program for indirect costs is calculated as the product of:
  - a. The number of allocated eligible residents and fellows adjusted for the number of months or partial months worked in each hospital or non-hospital setting under agreement between the non-hospital setting and the reporting hospital;
  - b. The indirect cost per resident per month calculated in R9-22-712.05(D)(4)(b)(vi) in the previous calendar year; and
  - c. Twelve months.
6. Payments are made to participating hospitals based on the FTEs who worked at their hospitals per year.
- D.** Final allocation of funds. Annually no sooner than September 1 following the start of the academic year, the Administration will recalculate the allocation for urban and rural hospitals using the same methodology used to estimate distributions, but using the actual residents and fellows as reported in R9-22-712.06(B)(3)(c).
- F.** Exclusions. To ensure that residents and fellows are not double counted residents/fellows which receive funding through R9-22-712.06 shall not receive funding through R9-22-712.05.
  - a. Has 100 or fewer PPS beds, not including beds reported as sub provider beds on the hospital's Medicare Cost Report, and is located in a county with a population of less than 500,000 persons, or
  - b. Is designated as a critical access hospital for the majority of the previous state fiscal year.
- B.** Each February, the Administration shall allocate the Fund to the following three pools for the fiscal year:
  1. Rural hospitals with 25 or fewer PPS beds not including sub provider beds and all Critical Access Hospitals, regardless of the number of beds in the Critical Access Hospital;
  2. Rural hospitals other than Critical Access Hospitals with 26 to 75 PPS beds not including sub provider beds; and
  3. Rural hospitals other than Critical Access Hospitals with 76 to 100 PPS beds not including sub provider beds.
- C.** The Administration shall allocate the Fund to each pool according to the ratio of claims paid amount for all hospitals assigned to the pool to total claims paid amount for all rural hospitals.
- D.** The Administration shall determine each hospital's claims paid amount and allocate the funds in each pool to each hospital in the pool based on the ratio of each hospital's claims paid amount to the sum of the claims paid amount for all hospitals assigned to the pool.
- E.** The Administration shall not make a Fund payment to a hospital that will result in the hospital's claims paid amount plus that hospital's Fund payment being greater than that hospital's calculated inpatient costs.
  1. If a hospital's claims paid amount plus the hospital's Fund payment would be greater than the hospital's calculated inpatient costs, the Administration shall make a Fund payment to the hospital equal to the difference between the hospital's calculated inpatient costs and the hospital's claims paid amount.
  2. The Administration shall reallocate any portion of a hospital's Fund allocation that is not paid to the hospital due to the reason in subsection (E)(1) to the other eligible hospitals in the pool based upon the ratio of the claims paid amount for each hospital remaining in the pool to the sum of the claims paid amount for each hospital remaining in the pool.
- F.** If funds remain in a pool after allocations to each hospital in the pool under subsections (D) and (E), the Administration shall reallocate the remaining funds to the other pools based upon the ratio of each pool's original allocation of the Fund as determined under subsection (C) to the sum of the remaining pools' original Fund allocations under subsection (C). The Administration shall allocate remaining funds to the hospitals in the remaining pools under subsection (D) and (E). See Exhibit 1 for an example.
- G.** Subject to CMS approval of the method and distribution of the Fund, the administration or its contractors will distribute the Fund as a lump sum allocation to the rural hospitals in either one or two installments by the end of each state fiscal year.

**Historical Note**

New Section made by final rulemaking at 27 A.A.R. 2496 (October 29, 2021), with an immediate effective date of October 6, 2021 (Supp. 21-4).

**R9-22-712.07. Rural Hospital Inpatient Fund Allocation**

- A.** For purposes of this Section, the following words and phrases have the following meanings unless the context specifically requires another meaning:
  1. "Calculated inpatient costs" means the sum of inpatient covered charges multiplied by the Milliman study's implied cost-to-charge ratio of .8959.
  2. "Claims paid amount" means the sum of all claims paid by the Administration and contractors, as reported by the contractor to the Administration, to a rural hospital for covered inpatient services rendered for dates of service during the previous state fiscal year.
  3. "Fund" means any state funds appropriated by the Legislature for the purposes set forth in A.R.S. § 36-2905.02 and any federal funds that are available for matching the state funds.
  4. "Inpatient covered charges" means the sum of all covered charges billed by a hospital to the Administration or contractors, as reported by the contractors to the Administration, for inpatient services rendered during the previous state fiscal year.
  5. "Milliman study" means the report issued by Milliman USA on March 11, 2004, to the Arizona Hospital and Healthcare Association that updated a portion of a cost study entitled "Evaluation of the AHCCCS Inpatient Hospital Reimbursement System" prepared by Milliman USA for AHCCCS on November 15, 2002. A copy of each report is on file with the Administration.
  6. "Rural hospital" means a health care institution that is licensed as an acute care hospital by the Arizona Department of Health Services for the previous state fiscal year and is not an IHS hospital or a tribally owned or operated facility and:

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 22 A.A.R. 3476, effective January 30, 2016 (Supp. 15-4).

**Exhibit 1. Pool Example**

Pool A receives \$2,000,000. Pool B receives \$7,000,000. Pool C receives \$3,000,000.

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If all of the funds in Pool B are paid to eligible hospitals and there is \$1,000,000 remaining, the remaining funds would be allocated to Pool A and Pool C based on the ratio of each pool's original allocation (original allocations of \$2,000,000 and \$3,000,000) to the total of their original allocation ( $\$2,000,000 + \$3,000,000 = \$5,000,000$ ).

Pool A would receive 2/5 of the remaining funds (\$400,000) and Pool C would receive 3/5 of the remaining funds (\$600,000).

**Historical Note**

Exhibit 1 made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2).

**R9-22-712.08. Federally Qualified Health Center and Rural Health Clinic Graduate Medical Education Program**

- A.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for primary care GME programs approved by the Administration to Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) for direct and indirect program costs eligible for funding under A.R.S. § 36-2907.06(I).
1. A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D).
  2. For purposes of this subsection, the term "FQHC" includes Federally Qualified Health Center Look-Alikes.
- B.** Eligible health care facilities. A health care facility is eligible for a distribution under subsection (G) if all of the following apply:
1. It is an FQHC or RHC in Arizona that is the sponsoring institution of, or a full member of a consortium that is the sponsoring institution of, or a participating institution in, one or more approved primary care GME programs in Arizona;
  2. It incurs direct or indirect costs for the training of residents in Arizona in approved primary care GME programs;
  3. The GME program is not eligible for funding under R9-22-712.05; and
  4. The GME program is not fully funded by the federal government.
- C.** Eligible residents and resident positions. For purposes of determining program allocation amounts under subsections (E) and (F) the following residents and resident positions are eligible for consideration, to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B):
1. All filled resident positions in approved primary care GME programs; or
  2. For approved primary care GME programs established for less than one year as of the date of annual reporting under subsection (D) and that have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.
- D.** Annual reporting. By April 1st of each year, an FQHC or RHC seeking a distribution under this subsection shall:
1. Provide to the Administration the following information about each approved primary care GME program:
    - a. The program name and number assigned by the accrediting organization;
    - b. The original date of accreditation of the program;
    - c. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
  - d. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
  - e. The academic year rotation schedule on file with the program current as of the date of reporting; and
  - f. For programs described under subsection (C)(2), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
2. Provide to the Administration the most recent Medicare Cost Report for the FQHC or RHC seeking the distribution, and
  3. For an FQHC or RHC that is a full member of a consortium that is the sponsoring institution of an approved primary care GME program, provide to the Administration a signed letter attesting to the responsibility of the full member FQHC or RHC for direct or indirect costs of training residents in the program.
- E.** Allocation of funds for direct graduate medical education costs. Annually the Administration shall allocate available funds for direct graduate medical education costs to each eligible FQHC or RHC in the following manner:
1. A Medicaid utilization percent for each FQHC or RHC seeking a distribution shall be calculated using the Medicare Cost Report submitted under subsection (D)(2), dividing the Title XIX visit count by the whole number of visits reported and rounding the result up to the nearest multiple of 5 percent.
  2. A total number of residents eligible for funding in each program shall be calculated using the information submitted under subsection (D)(1), dividing the number of resident rotations in the year that take place in Arizona and not at a health care facility made ineligible under subsection (B) by the total number of resident rotations in the program for that year, multiplying the result by the total number of filled resident positions in the program and rounding to two digits after the decimal.
  3. The allocation for direct graduate medical education costs for each eligible FQHC or RHC shall be calculated by multiplying the number of residents determined under subsection (E)(2) by the statewide average per-resident amount determined under this subsection and multiplying the result by the Medicaid utilization percent calculated for the FQHC or RHC under subsection (E)(1). The statewide average per-resident amount for the academic year ending June 30, 2022 is \$170,090. Annually thereafter, a statewide average per-resident amount shall be calculated by applying the Federally Qualified Health Center PPS Market Basket Update less Productivity Adjustment published by CMS for the calendar year in which the GME academic year begins.
- F.** Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds for indirect program costs to each eligible FQHC or RHC in the following manner:
1. By multiplying the number of residents determined under subsection (E)(2) by the statewide average per-resident

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amount determined under this subsection and multiplying the result by the Medicaid utilization percent calculated for the FQHC or RHC under subsection (E)(1). The statewide average per-resident amount for the academic year ending June 30, 2022 is \$167,330;

2. Annually thereafter, a statewide average per-resident amount shall be calculated by applying the Federally Qualified Health Center PPS Market Basket Update less Productivity Adjustment published by CMS for the calendar year in which the GME academic year begins.

G. Distribution of funds. On an annual basis subject to available funds, the Administration shall distribute to each eligible FQHC and RHC the sum of all amounts calculated for the FQHC or RHC under subsections (E)(3) and (F).

H. The Administration may enter into intergovernmental agreements with local, county, and tribal governments and any university under the jurisdiction of the Arizona Board of Regents wherein such entities may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will contribute to the state funding to qualify for federal matching funds. Those funds will be used for the purposes of reimbursing FQHCs and RHCs that are eligible under this rule and designated by the local, county, or tribal governments for receipt of the contributed funds. The Administration shall allocate available funds in accordance with subsections (E) and (F).

**Historical Note**

New Section made by final rulemaking at 28 A.A.R. 837 (April 29, 2022), with an immediate effective date of April 5, 2022 (Supp. 22-2).

**R9-22-712.09. Hierarchy for Tier Assignment through September 30, 2014**

TIER	IDENTIFICATION CRITERIA	ALLOWED SPLITS
MATERNITY	A primary diagnosis defined as maternity 640.xx - 643.xx, 644.2x - 676.xx, v22.xx - v24.xx or v27.xx.	None
NICU	Revenue Code of 174 and the provider has a Level II or Level III NICU.	Nursery
ICU	Revenue Codes of 200-204, 207-212, or 219.	Surgery Psychiatric Routine
SURGERY	Surgery is identified by a revenue code of 36x. To qualify in this tier, there must be a valid surgical procedure code that is not on the excluded procedure list.	ICU
PSYCHIATRIC	Psychiatric Revenue Codes of 114, 124, 134, 144, or 154 AND primary Psychiatric Diagnosis = 290.xx - 316.xx. If a routine revenue code is present and all diagnoses codes on the claim are equal to 290.xx - 316.xx, classify as a psychiatric claim.	ICU
NURSERY	Revenue Code of 17x, not equal to 174.	NICU
ROUTINE	Revenue Codes of 100 - 101, 110-113, 116 - 123, 126 - 133, 136 - 143, 146 - 153, 156 - 159, 16x, 206, 213, or 214.	ICU

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.10. Outpatient Hospital Reimbursement: General**

- A. Effective rule. The outpatient hospital reimbursement rules apply to dates of service beginning July 1, 2005, subject to Laws 2004, Ch. 279, § 19.
- B. Basis For Payment. Except as provided under R9-22-712.30, AHCCCS shall pay for designated outpatient procedures provided to AHCCCS members according to the AHCCCS Outpatient Capped Fee-For-Service Schedule as defined in R9-22-712.20.
- C. Data. AHCCCS shall use Medicare Cost Report and adjudicated claim and encounter data from non-IHS acute care hospitals located in the state of Arizona to develop fees for the AHCCCS Outpatient Capped Fee-For-Service Schedule.
- D. Hospital Services Subject To Fees. AHCCCS shall reimburse services, in the following outpatient hospital categories under the AHCCCS Outpatient Capped Fee-For-Service Schedule:
  1. Surgery,
  2. Emergency Department,
  3. Laboratory,
  4. Radiology,
  5. Clinic, and
  6. Other services.
- E. Reimbursement. AHCCCS shall reimburse outpatient hospital services by procedure codes, in proper combination with revenue codes, as prescribed by AHCCCS.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-712.11. Reserved**

**R9-22-712.12. Reserved**

**R9-22-712.13. Reserved**

**R9-22-712.14. Reserved**

**R9-22-712.15. Outpatient Hospital Reimbursement: Affected Hospitals**

Except as provided in R9-22-712(G), the AHCCCS Outpatient Capped Fee-For-Service Schedule shall apply to AHCCCS payments for outpatient services in all non-IHS acute hospitals.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-712.16. Reserved**

**R9-22-712.17. Reserved**

**R9-22-712.18. Reserved**

**R9-22-712.19. Reserved**

**R9-22-712.20. Outpatient Hospital Reimbursement: Methodology for the AHCCCS Outpatient Capped Fee-For-Service Schedule**

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- A.** To establish the AHCCCS Outpatient Capped Fee-for-service Schedule for all claims with a begin date of service on or before September 30, 2011, AHCCCS shall:
1. Define the dataset of claims and encounters that shall be used to establish the AHCCCS Outpatient Capped Fee-for-service Schedule.
  2. Identify all the claims and encounters from non-IHS acute hospitals located in Arizona for services to be paid under the AHCCCS Outpatient Capped Fee-for-service Schedule.
  3. Match the revenue code on each detail of each claim and encounter to the ancillary line item CCR as reported on hospital-specific mapping documents and hospital-specific Medicare Cost Report for those hospitals that have submitted Medicare Cost Reports FYE 2002.
  4. Multiply the line item CCR from subsection (A)(3) by the covered billed charge for that revenue code to establish the cost for the service.
  5. Inflate the cost for the service from subsection (A)(4) using Global Insight Health-care Cost Review inflation factors from date of service month to the midpoint of the rate year in which the fees are initially effective.
  6. Include associated costs under R9-22-712.25 to calculate the rates for emergency room and surgery services.
  7. Combine data from all Arizona hospitals identified in subsection (A)(3) for each procedure code to establish the statewide median cost for each procedure.
  8. Group procedure codes according to the Ambulatory Payment Classification (APC) System groups as listed in 69 FR 65682, November 15, 2004, and establish a statewide median cost for each APC. Multiply each statewide median APC cost by 116 percent to establish the AHCCCS-based fee for each procedure in that specific APC group. AHCCCS shall assign each procedure in the group the same fee.
  9. For those procedure codes that are not grouped into any APC, establish a procedure-specific fee using either:
    - a. The AHCCCS Non-hospital Capped Fee-for-service Fee Schedule,
    - b. 116 percent of the procedure-specific median cost AHCCCS-based fee, or
    - c. The Medicare Clinical Laboratory Fee Schedule for laboratory services.
  10. Compare the AHCCCS-based fee established in subsections (A)(8) and (9) against the comparable Medicare fee established for the Medicare APC group as listed in the 69 FR 65682, November 15, 2004. The fee for each procedure shall be the greater of the AHCCCS-based fee or the Medicare fee but no more than 150 percent of the AHCCCS-based fee; however, for those laboratory services for which a limit is established in the Medicare Clinical Laboratory Fee Schedule, the fee shall not exceed that limit.
  11. Assign the 2005 Medicare fee in the AHCCCS Outpatient Capped Fee-for-service Schedule for those procedures for which there are fewer than 20 occurrences of the procedure code in the dataset, either independently, or, if applicable, for all procedure codes within an APC Group.
- B.** For all claims with a begin date of service on or after October 1, 2011, the AHCCCS Outpatient Capped Fee-for-Service Schedule shall be derived from the CMS Medicare Outpatient Prospective Payment System (OPPS) fee schedule modified by an Arizona conversion factor determined annually.
1. When clinic services are billed using 51X revenue codes, the reimbursement to the hospital is the difference between the facility and non-facility rates payable to the practitioner for the procedures listed in the Administration's Capped Fee-for-service Schedule under R9-22-710.
  2. Observation services, when not billed in conjunction with a service for which a single payment is made under R9-22-712.25, are reimbursed at an hourly rate published in the Outpatient Capped Fee-for-service Schedule. This hourly rate includes reimbursement for associated services.
- C.** The AHCCCS Outpatient Capped Fee-for-service Schedule including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.
- Historical Note**
- New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).
- R9-22-712.21. Reserved**
- R9-22-712.22. Reserved**
- R9-22-712.23. Reserved**
- R9-22-712.24. Reserved**
- R9-22-712.25. Outpatient Hospital Fee Schedule Calculations: Associated Service Costs**
- A.** AHCCCS shall include the costs of associated services, as defined by revenue codes and procedure codes, when determining the specific fees for the outpatient hospital procedures for emergency department and surgery services.
- B.** Payment made under subsection (A) or R9-22-712.20(B)(2) is inclusive of all services on the claim regardless of whether the services are provided on one or more days.
- C.** A complete listing of the revenue codes and procedure codes for associated costs included in the payment for emergency and surgery services including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.
- Historical Note**
- New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3).
- R9-22-712.26. Reserved**
- R9-22-712.27. Reserved**
- R9-22-712.28. Reserved**
- R9-22-712.29. Reserved**
- R9-22-712.30. Outpatient Hospital Reimbursement: Payment for a Service Not Listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule**
- A.** AHCCCS shall calculate a statewide CCR for a service where a specific fee cannot be determined under R9-22-712.20.
- B.** For claims with a begin date of service on or before September 30, 2011, the statewide CCR shall be calculated based on the costs and covered charges associated with a service under sub-

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section (A) for all Arizona hospitals, using the method specified in R9-22-712.20(A)(3).

- C. For all claims with a begin date of service on or after October 1, 2011, the statewide CCR calculation shall equal either the CMS Medicare Outpatient Urban Cost-to-charge Ratio or the CMS Medicare Outpatient Rural Cost-to-charge Ratio published by CMS for the state of Arizona. AHCCCS shall use the urban cost-to-charge ratio for hospitals located in a county of 500,000 residents or more and for out-of-state hospitals. AHCCCS shall use the rural cost-to-charge ratio for hospitals located in a county of fewer than 500,000 residents. On October 1st of each year, AHCCCS shall adjust urban and rural CCRs to the CCRs as published by CMS in the *Federal Register* on or before August 1st of that year.
- D. To determine the payment amount for procedures where a specific fee is not determined under R9-22-712.20, the statewide CCR is multiplied by the covered charges.
- E. Reductions to payments for outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule. Outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rate published by CMS pursuant to subsection (C) of this Section.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

**R9-22-712.31. Reserved**

**R9-22-712.32. Reserved**

**R9-22-712.33. Reserved**

**R9-22-712.34. Reserved**

**R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees**

- A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:
- By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
  - By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  - By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  - By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  - By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in

which the Outpatient Capped Fee-for-service Schedule rates are effective; or

- By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.
- B. For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:
- By 73 percent for public hospitals;
  - By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
  - By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
  - By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
  - By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
  - By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.
- C. In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.
- D. Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).
- E. For outpatient services with dates of service from October 1, 2022 through September 30, 2023, the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
- A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in (1)(a), (b), (c) or (d):
    - By April 1, 2022, the hospital must have submitted a Letter of Intent (LOI) to the Health Information Exchange (HIE) in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved.
      - No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates

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- or maintain its participation in the milestone activities if they have already been achieved.
- ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
    - (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.
    - (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
    - (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
  - iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.
  - iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
  - v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
  - vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.
  - vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
  - viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
  - ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
  - x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:
    - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
    - (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
    - (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
  - xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.5% if criteria are met for all categories.
    - (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
    - (2) Event type must be properly coded on all ADT transactions. (0%)
    - (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
    - (4) Patient demographic information must be submitted on all ADT transactions. (0%)
    - (5) Race must be submitted on all ADT transactions. (0.5%)
    - (6) Ethnicity must be submitted on all ADT transactions. (0.5%)
    - (7) Diagnosis must be submitted on all ADT transactions. (0.5%)
    - (8) Overall completeness of the ADT message. (0%)
- b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
    - i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
    - ii. No later than April 1, 2022:
      - (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH

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Closed-Loop Referral Platform.

- (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
  - (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
- iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.
  - c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
    - i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
    - ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
    - iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
    - iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
    - v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
    - vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.
  - d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
    - i. Number of ICU beds in use,
    - ii. Number of ICU beds available for use,
    - iii. Number of Medical-Surgical beds in use,
    - iv. Number of Medical-Surgical beds available for use,
    - v. Number of Telemetry beds in use,
    - vi. Number of Telemetry beds available for use.
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria specified in (2)(a),(b), (c) or (d):
    - a. By April 1, 2022 the hospital must have submitted a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:
      - i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
      - ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
        - (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
        - (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
        - (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
      - iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all out-

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- sourced lab test results flow to the qualifying HIE organization on their behalf.
- iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
  - v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
  - vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.
  - vii. No later than November 1, 2022, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
  - viii. No later than January 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
  - ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
  - x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:
    - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
    - (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
    - (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
  - xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.
    - (1) Data source and data site information must be submitted on all ADT transactions. (1.0%)
    - (2) Event type must be properly coded on all ADT transactions. (1.0%)
    - (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
    - (4) Patient demographic information must be submitted on all ADT transactions. (0%)
    - (5) Race must be submitted on all ADT transactions. (2.0%)
    - (6) Ethnicity must be submitted on all ADT transactions. (2.0%)
    - (7) Diagnosis must be submitted on all ADT transactions. (2.0%)
    - (8) Overall completeness of the ADT message. (0%)
- b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
    - i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
    - ii. No later than April 1, 2022:
      - (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      - (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      - (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
    - iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.
  - c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The

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- facility agrees to achieve and maintain participation in the following activities:
- i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
  - ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
  - iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
  - iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
  - v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
  - vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.
- d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
- i. Number of ICU beds in use,
  - ii. Number of ICU beds available for use,
  - iii. Number of Medical-Surgical beds in use,
  - iv. Number of Medical-Surgical beds available for use,
  - v. Number of Telemetry beds in use, and
  - vi. Number of Telemetry beds available for use.
3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in (3)(a), (b), (c), (d), (e), or (f):
- a. In order to qualify, by April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:
    - i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
    - ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
      - (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
      - (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
      - (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
    - iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.
    - iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
    - v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
    - vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization or

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- an Advance Directives Registry platform operated by the qualifying HIE organization.
- vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
  - viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
  - ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
  - x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to DAP increases described below.
    - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
    - (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
    - (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
  - xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.
    - (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
    - (2) Event type must be properly coded on all ADT transactions. (0%)
    - (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
    - (4) Patient demographic information must be submitted on all ADT transactions. (0%)
    - (5) Race must be submitted on all ADT transactions. (0.5%)
    - (6) Ethnicity must be submitted on all ADT transactions. (0.5%)
    - (7) Diagnosis must be submitted on all ADT transactions. (0.5%)
    - (8) Overall completeness of the ADT message. (0%)
  - b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
    - i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
    - ii. No later than April 1, 2022:
      - (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      - (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      - (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
    - iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.
    - c. On March 15, 2022 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website. APU recipients are those facilities that satisfactorily met the requirements for the IPFQR program, which includes multiple clinical quality measures. Facilities identified as APU recipients will qualify for the DAP increase.
    - d. On March 15, 2022 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Provider Data Catalog website for long-term care hospitals. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.
    - e. On March 15, 2022 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Provider Data Catalog website for rehabilitation hospitals. Facility results will be compared to the national average results for the measure. Hospitals that meet or fall below the national average percentage will qualify for the DAP increase.
    - f. By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
      - i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
      - ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for

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- requesting services to be performed by the non-IHS/Tribal 638 facility.
- iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
  - iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
  - v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022, through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
  - vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.
4. A hospital designated as type: hospital, subtype: long term or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the following criteria. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
    - i. Number of ICU beds in use,
    - ii. Number of ICU beds available for use,
    - iii. Number of Medical-Surgical beds in use,
    - iv. Number of Medical-Surgical beds available for use,
    - v. Number of Telemetry beds in use, and
    - vi. Number of Telemetry beds available for use.
  5. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (IHS) or under Tribal authority will qualify for an increase if it meets these criteria specified in (5)(a) or (b);
    - a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:
      - i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
        - ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
          - (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
          - (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
          - (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
      - iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.
      - iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination. If the hospital has ambulatory and/or behavioral health practices, then the facility must submit the following actual patient identifiable information to the production environment of a qualifying HIE: registration, encounter summary, and SMI data elements as defined by the qualifying HIE organization. For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
      - v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

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- vi. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
- vii. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
- viii. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:
  - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
  - (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
  - (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
- ix. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 2.5% if criteria are met for all categories indicating a DAP.
  - (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
  - (2) Event type must be properly coded on all ADT transactions. (0.5%)
  - (3) Patient class must be properly coded on all appropriate ADT transactions. (0.5%)
  - (4) Patient demographic information must be submitted on all ADT transactions. (0.5%)
  - (5) Overall completeness of the ADT message. (0.5%)
- b. By March 15, 2022, the facility must submit a LOI to enter into a CCA with a non-IHS/638 facility (a fully signed copy of a CCA with a non-IHS/Tribal 638 facility is also acceptable). By April 30, 2021, the facility must have entered into a CCA with a non-IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities: The IHS/Tribal 638 facility will have in place a signed CCA with a non-IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
  - i. The IHS/Tribal 638 facility will have a valid referral template in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
  - ii. The IHS/Tribal 638 facility will continue to assume responsibility of the referred member, maintaining records and release of information protocol including clinical documentation of services provided by the non-IHS/Tribal 638 facility.
  - iii. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the IHS/Tribal 638 facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2021.
  - iv. The IHS/638 facility will submit a minimum of one referral and any supporting medical documentation to the non-IHS/Tribal 638 facility by September 1, 2022. During CYE 2023, from October 1, 2022, through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA referrals per month to the non-IHS/Tribal 638 facility.
  - v. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA referrals to the non-IHS/Tribal 638 facility by March 15, 2022, and submit an average of 5 CCA referrals per month by May 31, 2022.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4). AHCCCS filed an incorrect version of a final rulemaking which made amendments to this Section published at 27 A.A.R. 2501 (October 29, 2021); AHCCCS filed the correct version of its final rulemaking on December 3, 2021, with this Section amended by final rulemaking at 27 A.A.R. 3015 (December 31, 2021), effective October 1, 2021 (Supp. 21-4). Amended by final rulemaking at 28 A.A.R. 3283 (October 14, 2022), with an immediate effective date of September 23, 2022 (Supp. 22-3).

- R9-22-712.36. Reserved**
- R9-22-712.37. Reserved**
- R9-22-712.38. Reserved**
- R9-22-712.39. Reserved**
- R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update**
  - A.** Procedure codes. When procedure codes are issued by CMS and added to the Current Procedural Terminology published by the American Medical Association, AHCCCS shall add to the Outpatient Capped Fee-for-Service Schedule the new procedure codes for covered outpatient services and shall either assign the default CCR under R9-22-712.40(F)(2), the Medicare rate, or calculate an appropriate fee.

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- B.** APC changes. AHCCCS may reassign procedure codes to new or different APC groups when APC groups are revised by CMS. AHCCCS may reassign procedure codes to a different APC group than Medicare. If AHCCCS determines that utilization of a procedure code within the Medicare program is substantially different from utilization of the procedure code in the AHCCCS program, AHCCCS may choose not to assign the procedure code to any APC group. For procedure codes not grouped into an APC by Medicare, AHCCCS may assign the code to an APC group when AHCCCS determines that the cost and resources associated with the non-assigned code are substantially similar to those in the APC group.
- C.** Annual update for Outpatient Hospital Fee Schedule. Beginning October 1, 2006, through September 30, 2011, AHCCCS shall adjust outpatient fee schedule rates:
1. Annually by multiplying the rates effective during the prior year by the Global Insight Prospective Hospital Market Basket Inflation Index; or
  2. In a particular year the director may substitute the increases in subsection (C)(1) by calculating the dollar value associated with the inflation index in subsection (C)(1), and applying the dollar value to adjust rates at varying levels.
- D.** Reductions to the Outpatient Capped Fee-For-Service Schedule. Claims paid using the Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rates in effect on September 30, 2011, subject to the annual adjustments to procedure codes and APCs under this Section.
- E.** Rebase. AHCCCS shall rebase the outpatient fees every five years.
- F.** Statewide CCR:
1. For begin dates of service on or before September 30, 2011, the statewide CCR calculated in R9-22-712.30 shall be recalculated at the time of rebasing. When rebasing, AHCCCS may recalculate the statewide CCR based on the costs and charges for services excluded from the outpatient hospital fee schedule.
  2. For begin dates of service on or after October 1, 2011, the statewide CCR shall be set under R9-22-712.30(C).
- G.** Other Updates. In addition to the other updates provided for in this Section, the Administration may adjust the Outpatient Capped Fee-For-Service Fee Schedule and the Statewide CCR to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.41. Reserved**

**R9-22-712.42. Reserved**

**R9-22-712.43. Reserved**

**R9-22-712.44. Reserved**

**R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions**

- A.** AHCCCS shall not reimburse hospitals for emergency room treatment, observation hours, or other outpatient hospital services performed on an outpatient basis if the member is admitted as an inpatient to the same hospital directly from the emergency room, observation, or other outpatient department.
- B.** AHCCCS shall include payment for the emergency room, observation, and other outpatient hospital services provided to the member before the hospital admission in the AHCCCS Inpatient Tiered Per Diem Capped Fee-For-Service Schedule under Article 7 of this Chapter.
- C.** Same day admit and discharge.
1. For discharges before September 30, 2014. Same day admit and discharge claims that qualify for either the maternity or nursery tiers shall be paid based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
  2. For discharge dates on and after October 1, 2014. Same day admit and discharge claims are paid for through the outpatient fee schedule.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.46. Reserved**

**R9-22-712.47. Reserved**

**R9-22-712.48. Reserved**

**R9-22-712.49. Reserved**

**R9-22-712.50. Outpatient Hospital Reimbursement: Billing**

To receive appropriate reimbursement, hospitals shall:

1. Bill outpatient hospital services on the CMS approved Uniform Billing Form or in electronic format using the appropriate HIPAA transaction.
2. Follow the UB Manual Guidelines, as published by the National Uniform Billing Committee, and use the appropriate revenue code and procedure code combination as prescribed by AHCCCS and on file and online with AHCCCS.

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**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

- R9-22-712.51. **Reserved**
- R9-22-712.52. **Reserved**
- R9-22-712.53. **Reserved**
- R9-22-712.54. **Reserved**
- R9-22-712.55. **Reserved**
- R9-22-712.56. **Reserved**
- R9-22-712.57. **Reserved**
- R9-22-712.58. **Reserved**
- R9-22-712.59. **Reserved**

**R9-22-712.60. Diagnosis Related Group Payments**

- A. Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this Section and R9-22-712.61 through R9-22-712.81.
- B. Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. Are reimbursed through the DRG methodology and not reimbursed separately.
- C. Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. The applicable version of the APR-DRG classification system shall be available on the agency's website.
- D. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.
- E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.
- F. For purposes of this Section and Sections R9-22-712.61 through R9-22-712.81:
  1. "DRG National Average length of stay" means the national arithmetic mean length of stay published in the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
  2. "Length of stay" means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
  3. "Medicare" means Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.
  4. "Medicare labor share" means a hospital's labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016

(Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.61. DRG Payments: Exceptions**

- A. Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 801 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).
  1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
  2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
  3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year.
- B. Notwithstanding Section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this Section, even if behavioral health services are provided during the inpatient stay.
- C. Notwithstanding Section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.
- D. Notwithstanding Section R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register.
- E. For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.
- F. For inpatient services with a date of admission from October 1, 2022 through September 30, 2023, provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to

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a public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

- I. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (1)(a), (b), (c), or (d):
  - a. By April 1, 2022, a hospital the hospital must have submitted a Letter of Intent (LOI) to AHCCCS and the Health Information Exchange (HIE), in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved.
    - i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
    - ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
      - (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.
      - (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
      - (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
    - iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.
    - iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
    - v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
    - vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.
    - vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
    - viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
    - ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
    - x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below:
      - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2022 data, to the final data quality profile, based on March 2022 data.
      - (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
      - (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
    - xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.
      - (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
      - (2) Event type must be properly coded on all ADT transactions. (0%)
      - (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
      - (4) Patient demographic information must be submitted on all ADT transactions. (0%)
      - (5) Race must be submitted on all ADT trans-

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- actions. (0.5%)
- (6) Ethnicity must be submitted on all ADT transactions. (0.5%)
- (7) Diagnosis must be submitted on all ADT transactions. (0.5%)
- (8) Overall completeness of the ADT message. (0%)
- b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
- i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
  - ii. No later than April 1, 2022:
    - (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
    - (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
    - (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
  - iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.
- c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
- i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
  - ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
  - iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
  - iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
  - v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
  - vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.
- d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
- i. Number of ICU beds in use,
  - ii. Number of ICU beds available for use,
  - iii. Number of Medical-Surgical beds in use,
  - iv. Number of Medical-Surgical beds available for use,
  - v. Number of Telemetry beds in use, and
  - vi. Number of Telemetry beds available for use.
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified in subsection (2)(a), (b), (c), or (d):
- a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:
    - i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
    - ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:

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- (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
  - (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
  - (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
- iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.
  - iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
  - v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
  - vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.
  - vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
  - viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
  - ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
- x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.
    - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
    - (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
    - (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
  - xi. DAP HIE Data Quality Standards CYE 2022 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.
    - (1) Data source and data site information must be submitted on all ADT transactions. (2.0%)
    - (2) Event type must be properly coded on all ADT transactions. (0%)
    - (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
    - (4) Patient demographic information must be submitted on all ADT transactions. (0%)
    - (5) Race must be submitted on all ADT transactions. (2.0%)
    - (6) Ethnicity must be submitted on all ADT transactions. (2.0%)
    - (7) Diagnosis must be submitted on all ADT transactions. (2.0%)
    - (8) Overall completeness of the ADT message. (0%)
  - b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates.
    - i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
    - ii. No later than April 1, 2022:
      - (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      - (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      - (3) For hospitals that have not participated in

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DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.

- iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.
- c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
  - i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
  - ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
  - iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
  - iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
  - v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
  - vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.
- d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through

an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:

- i. Number of ICU beds in use,
- ii. Number of ICU beds available for use,
- iii. Number of Medical-Surgical beds in use,
- iv. Number of Medical-Surgical beds available for use,
- v. Number of Telemetry beds in use, and
- vi. Number of Telemetry beds available for use.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3111 and at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4). AHCCCS filed an incorrect version of a final rulemaking which made amendments to this Section published at 27 A.A.R. 2501 (October 29, 2021); AHCCCS filed the correct version of its final rulemaking on December 3, 2021, with this Section amended by final rulemaking at 27 A.A.R. 3015 (December 31, 2021), effective October 1, 2021 (Supp. 21-4). Amended by final rulemaking at 28 A.A.R. 3283 (October 14, 2022), with an immediate effective date of September 23, 2022 (Supp. 22-3).

**R9-22-712.62. DRG Base Payment**

- A. The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjusters.
- B. The DRG base rate for each hospital is the statewide standardized amount of which the hospital's labor-related share of that amount is adjusted by the hospital's wage index. The hospital's labor share is determined based on the labor share for the Medicare inpatient prospective payment system published in 85 Fed. Reg. 59060 through 59061 (September 18, 2020). The hospital's wage index is determined based on the wage index tables reference in 85 Fed. Reg. 59059 (September 18, 2020). The statewide standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.
- C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the "pre-HCAC" DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the "post-HCAC" DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4). Amended by final rulemaking at 27 A.A.R. 2512 (October 29, 2021), with an immediate effective date of October 6, 2021 (Supp. 21-4).

**R9-22-712.63. DRG Base Payments Not Based on the State-**

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**wide Standardized Amount**

- A.** Notwithstanding Section R9-22-712.62, a select specialty hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:
1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
  2. Hospitals designated as type: hospital, subtype: short-term that has a license number beginning "SH" in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.
- B.** The select specialty hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals**

- A.** DRG Base payment:
1. For high volume out-of-state hospitals defined in subsection (C), the wage adjusted DRG base payment is determined as described in R9-22-712.62.
  2. Notwithstanding subsection R9-22-712.62 the wage adjusted DRG base rate for out-of-state hospitals that are not high volume hospitals shall be included in the AHCCCS capped fee schedule available on the agency's website.
- B.** Outlier CCR:
1. Notwithstanding subsection R9-22-712.68, the CCR used for the outlier calculation for out-of-state hospitals that are not high volume hospitals shall be the sum of the statewide urban default operating cost-to-charge ratio and the statewide capital CCR in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
  2. The CCR used for the outlier calculation for high volume out-of-state hospitals is the same as in-state hospitals as described in R9-22-712.68.
- C.** A high volume out-of-state hospital is a hospital not otherwise excluded under R9-22-712.61, that is located in a county that borders the State of Arizona and had 500 or more AHCCCS covered inpatient days for the fiscal year beginning October 1, 2015.
- D.** Other than as required by this Section, DRG reimbursement for out-of-state hospitals is determined under R9-22-712.60 through R9-22-712.81.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.65. DRG Provider Policy Adjustor**

- A.** After calculating the DRG base payment as required in R9-22-712.62, R9-22-712.63, or R9-22-712.64, for claims from a high-utilization hospital, the product of the DRG base rate and

the DRG relative weight for the post-HCAC DRG code shall be multiplied by a provider policy adjustor that is included in the AHCCCS capped fee schedule available on the agency's website.

- B.** A hospital is a high-utilization hospital if the hospital had:
1. Covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, 2015, equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals;
  2. A Medicaid inpatient utilization rate greater than 30 percent calculated as the ratio of AHCCCS-covered inpatient days to total inpatient days as reported in the hospital's Medicare Cost Report for the fiscal year ending 2016; and,
  3. Received less than \$2 million in add-on payment for outliers under R9-22-712.68, based on adjudicated claims and encounters for fiscal year beginning October 1, 2015.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.66. DRG Service Policy Adjustor**

In addition to Section R9-22-712.65, for claims with DRG codes in the following categories, the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code, and the DRG provider policy adjustor shall be multiplied by the service policy adjustor listed in the AHCCCS capped fee schedule, available on the agency's website, corresponding to the following DRG codes:

1. Normal newborn DRG codes,
2. Neonates DRG codes,
3. Obstetrics DRG codes,
4. Psychiatric DRG codes,
5. Rehabilitation DRG codes,
6. Burn DRG codes.
7. Claims for members under age 19 assigned DRG codes other than listed above:
  - a. For dates of discharge occurring on or after October 1, 2014 and ending no later than December 31, 2015 regardless of severity of illness level,
  - b. For dates of discharge on or after January 1, 2016, for severity of illness levels 1 and 2,
  - c. For dates of discharge on or after January 1, 2016 and before January 1, 2017, for severity of illness levels 3 and 4.
  - d. For dates of discharge on or after January 1, 2017, and before January 1, 2018 for severity of illness levels 3 and 4.
  - e. For dates of discharge on or after January 1, 2018, for severity of illness levels 3 and 4.
8. Claims for members assigned DRG codes other than listed above.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.67. DRG Reimbursement: Transfers**

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- A. For purposes of this Section a “transfer” means the transfer of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, children’s hospital, or a critical access hospital except when a member is moved for the purpose of receiving sub-acute services.
- B. Designated cancer center or children’s hospitals are those hospitals identified as such in the UB-04 billing manual published by the National Uniform Billing Committee.
- C. The hospital the member is transferred from shall be reimbursed either the initial DRG base payment or the transfer DRG base payment, whichever is less.
- D. The transfer DRG base payment is an amount equal to the initial DRG base payment, as determined after making any provider or service policy adjustors, divided by the DRG National Average length of stay for the DRG code multiplied by the sum of one plus the length of stay.
- E. The hospital the member is transferred to shall be reimbursed under the DRG payment methodology without a reduction due to the transfer.
- F. Unadjusted DRG base payment. The unadjusted DRG base payment is either the initial DRG base payment, as determined after making any provider or service policy adjustors, or the transfer DRG base payment, whichever is less.
- E. For those inpatient hospital claims that qualify for an outlier add-on payment, the payment is calculated by subtracting the outlier threshold from the claim cost and multiplying the result by the DRG marginal cost percentage. The DRG marginal cost percentage for claims assigned DRG codes associated with the treatment of burns and for all other claims are included in the AHCCCS capped fee schedule available on the agency’s website.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.69. DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment**

Adjustments to the payments are made to account for days not covered by AHCCCS as follows:

1. A covered day reduction factor unadjusted is determined if the member is not eligible on the first day of the inpatient stay but is eligible for subsequent days during the inpatient stay. In this case, a covered day reduction factor unadjusted is calculated by dividing the number of AHCCCS covered days by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
2. A covered day reduction factor unadjusted is also determined if the member is eligible on the first day of the inpatient stay but is determined ineligible for one or more days prior to the date of discharge. In this case, a covered day reduction factor unadjusted is calculated by adding one to the number of AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
3. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
4. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
5. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

- Historical Note**
- New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

**R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment**

- A. Claims for inpatient hospital services qualify for an outlier add-on payment if the claim cost exceeds the outlier cost threshold.
- B. The claim cost is determined by multiplying covered charges by an outlier CCR as described by the following subsections:
1. For hospitals designated as type: hospital, subtype: children’s in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year. The outlier CCR will be calculated by dividing the hospital total costs by the total charges using the most recent Medicare Cost Report available as of September 1 of that year.
  2. For Critical Access Hospitals the outlier CCR will be the sum of the statewide rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
  3. For all other hospitals the outlier CCR will be the sum of the operating cost-to-charge ratio and the capital cost-to-charge ratio established for each hospital in the impact file established as part of the Medicare Inpatient Prospective Payment System by CMS.
- C. AHCCCS shall update the CCRs described in subsection (B) to conform to the most recent CCRs established by CMS as of September 1 of each year, and the CCRs so updated shall be used for claims with dates of discharge on or after October 1 of that year.
- D. The outlier threshold is equal to the sum of the unadjusted DRG base payment plus the fixed loss amount. The fixed loss amount for critical access hospitals and for all other hospitals are included in the AHCCCS capped fee schedule available on the agency’s website.

**R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members**

In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing

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the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.

2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.71. Final DRG Payment**

- A. The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.
- B. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
- C. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
- D. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 801 E. Jefferson Street, Phoenix, Arizona.
- E. For inpatient services with a date of discharge from October 1, 2022 through September 30, 2023, the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2022. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
  1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria:
    - a. By April 1, 2022, a hospital the hospital must have submitted a Letter of Intent (LOI) to AHCCCS and the Health Information Exchange (HIE), in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved.
      - i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
      - ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
        - (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE organization to ensure proper processing of lab results within the HIE system.
        - (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
        - (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
      - iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE organization, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf.
      - iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
      - v. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.

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- vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.
- vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
- viii. No later than January 1, 2023, the hospital must complete the data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
- ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
- x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.
  - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
  - (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
  - (3) If performance meets or exceeds an upper threshold of 90% based on March 2022 data, the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
- xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a 0.5% DAP increase for each category of the five measure categories, for a total potential increase of 2.0% if criteria are met for all categories.
  - (1) Data source and data site information must be submitted on all ADT transactions. (0.5%)
  - (2) Event type must be properly coded on all ADT transactions. (0%)
  - (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
  - (4) Patient demographic information must be submitted on all ADT transactions. (0%)
  - (5) Race must be submitted on all ADT transactions. (0.5%)
  - (6) Ethnicity must be submitted on all ADT transactions. (0.5%)
  - (7) Diagnosis must be submitted on all ADT transactions. (0.5%)
  - (8) Overall completeness of the ADT message. (0%)
- b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates.
  - i. No later than April 1, 2022, submit registration form or forms for participation using the form or forms on the website of the qualifying HIE organization.
  - ii. No later than April 1, 2022:
    - (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
    - (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
    - (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
  - iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.
  - c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
    - i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
    - ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
    - iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
    - iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
    - v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming

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- guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
- vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.
  - d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
    - i. Number of ICU beds in use,
    - ii. Number of ICU beds available for use,
    - iii. Number of Medical-Surgical beds in use,
    - iv. Number of Medical-Surgical beds available for use,
    - v. Number of Telemetry beds in use,
    - vi. Number of Telemetry beds available for use.
  2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified;
    - a. By April 1, 2022 the hospital must have submitted a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved:
      - i. No later than April 1, 2022, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates or maintain its participation in the milestone activities if they have already been achieved.
      - ii. No later than May 1, 2022, or by the hospital's go-live date for new data suppliers, or within 30 days of initiating the respective COVID-19 related services for current data suppliers, the hospital must complete the following COVID-19 related milestones, if they are applicable:
        - (1) Related to COVID-19 testing services, submit all COVID-19 lab test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
        - (2) Related to COVID-19 antibody testing services, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE organization to ensure proper processing of lab results within the HIE system.
        - (3) Related to COVID-19 immunization services, submit all COVID-19 immunization codes and the associated CDC-recognized code sets to the qualifying HIE organization to ensure proper processing of immunizations within the HIE system.
    - iii. No later than May 1, 2022, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE organization on their behalf.
    - iv. No later than May 1, 2022, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department; laboratory and radiology information (if the provider has these services); transcription; medication information; immunization data; and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination.
    - v. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
    - vi. No later than November 1, 2022, the hospital must approve and authorize a formal SOW to initiate connectivity to and usage of the Arizona Healthcare Directives Registry (AzHDR) operated by the qualifying HIE organization.
    - vii. No later than November 1, 2022, the hospital must approve and authorize a formal statement of work (SOW) to initiate and complete a data quality improvement effort, as defined by the qualifying HIE organization.
    - viii. No later than January 1, 2023, the hospital must complete the initial data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
    - ix. No later than May 1, 2023, the hospital must complete the final data quality profile with a qualifying HIE organization, in alignment with the data quality improvement SOW.
    - x. Quality Improvement Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases described below.
      - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on October 2021 data, to the final data quality profile, based on March 2022 data.
      - (2) Meet a minimum performance standard of at least 60% based on March 2022 data.
      - (3) If performance meets or exceeds an upper threshold of 90% based on March 2022

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- data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
- xi. DAP HIE Data Quality Standards CYE 2023 Measure Categories: Hospitals that meet the standards, as defined in Attachment A of this notice, qualify for a DAP increase for select Data Quality Measures for a total of 8.0% if criteria are met for all categories indicating a DAP.
    - (1) Data source and data site information must be submitted on all ADT transactions. (1.0%)
    - (2) Event type must be properly coded on all ADT transactions. (1.0%)
    - (3) Patient class must be properly coded on all appropriate ADT transactions. (0%)
    - (4) Patient demographic information must be submitted on all ADT transactions. (0%)
    - (5) Race must be submitted on all ADT transactions. (2.0%)
    - (6) Ethnicity must be submitted on all ADT transactions. (2.0%)
    - (7) Diagnosis must be submitted on all ADT transactions. (2.0%)
    - (8) Overall completeness of the ADT message. (0%)
  - b. By April 1, 2022, the hospital must have submitted a registration form for participation in the Social Determinants of Health (SDOH) Closed-Loop Referral Platform operated by the qualifying HIE organization in which the parties agree to achieve the following milestones by the specified dates;
    - i. No later than April 1, 2022, submit registration form(s) for participation using the form(s) on the website of the qualifying HIE organization.
    - ii. No later than April 1, 2022:
      - (1) For hospitals with an active Participation Agreement with a qualifying HIE organization, submit a signed Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      - (2) For hospitals without an active Participation Agreement with a qualifying HIE organization, execute a Participation Agreement and a Participant SDOH Addendum to participate in the SDOH Closed-Loop Referral Platform.
      - (3) For hospitals that have not participated in DAP HIE requirements in CYE 2022, the deadline for this milestone will be November 1, 2022.
    - iii. No later than September 30, 2022, or as soon as reasonably practicable thereafter as determined by the qualifying HIE organization, initiate use of the SDOH Closed-Loop Referral Platform operated by the qualifying HIE organization. After go-live, the hospital must regularly utilize the SDOH Closed-Loop Referral Platform, which will be measured by facilitating at least 10 referrals on average per month from go-live date through the end of CYE 2023. All referrals entered into the system by the hospital will be counted towards volume requirements.
  - c. By March 15, 2022, the facility must submit a LOI to enter into a CCA (a fully signed copy of a CCA with an IHS/Tribal 638 facility is also acceptable). By April 30, 2022, the facility must have entered into a CCA with a IHS/Tribal 638 facility for inpatient, outpatient, and ambulatory services provided through a referral under the executed CCA. The facility agrees to achieve and maintain participation in the following activities:
    - i. The facility will have in place a signed CCA with an IHS/Tribal 638 facility and will have submitted the signed CCA to AHCCCS. The CCA will meet minimum requirements as outlined in the CMS SHO Guidance.
    - ii. The facility will have a valid referral process for IHS/Tribal 638 facilities in place for requesting services to be performed by the non-IHS/Tribal 638 facility.
    - iii. The hospital will provide to the IHS/Tribal 638 facility clinical documentation of services provided through a referral under the CCA.
    - iv. AHCCCS will monitor activity specified under the CCA(s) to ensure compliance. To help facilitate this, the facility will participate in the HIE or establish an agreed claims operation process with AHCCCS for the review of medical records by May 31, 2022.
    - v. The non-IHS/Tribal 638 facility will receive a minimum of one referral and any supporting medical documentation from the IHS/Tribal 638 facility and submit a minimum of one claim to AHCCCS under the CCA claiming guidelines, by September 1, 2022. During CYE 2023, from October 1, 2022 through September 30, 2023, demonstrate a concerted effort to submit an average of 5 CCA claims per month to AHCCCS.
    - vi. Existing facilities with a CCA established in CYE 2022 will actively submit a minimum of 5 CCA claims to AHCCCS by March 15, 2022, and submit an average of 5 CCA claims per month to AHCCCS by May 31, 2022.
  - d. Upon the declaration of the end of the State of Arizona Public Health Emergency (PHE) issued on March 11, 2020, the hospital must submit a letter of intent (LOI) to AHCCCS in which it agrees to adult and pediatric bed capacity reporting to the Arizona Department of Health Services (ADHS). Specifically, the hospital shall report the following through an ADHS approved method to ADHS weekly, with deadlines and format prescribed by ADHS:
    - i. Number of ICU beds in use,
    - ii. Number of ICU beds available for use,
    - iii. Number of Medical-Surgical beds in use,
    - iv. Number of Medical-Surgical beds available for use,
    - v. Number of Telemetry beds in use, and
    - vi. Number of Telemetry beds available for use.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended

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by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 31, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4). AHCCCS filed an incorrect version of a final rulemaking which made amendments to this Section published at 27 A.A.R. 2501 (October 29, 2021); AHCCCS filed the correct version of its final rulemaking on December 3, 2021, with this Section amended by final rulemaking at 27 A.A.R. 3015 (December 31, 2021), effective October 1, 2021 (Supp. 21-4). Amended by final rulemaking at 28 A.A.R. 3283 (October 14, 2022), with an immediate effective date of September 23, 2022 (Supp. 22-3).

**R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay**

- A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in Sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in Sections R9-22-712.60 through R9-22-712.81.
- B. When a member's enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the "from" date of service on the claim regardless of the date of admission.
- C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the same manner as other interim claims as described in R9-22-712.76.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.73. DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare**

If the hospital receives less than the full Medicare payment for a member eligible for benefits under Part A of Medicare because the member has exceeded the maximum benefit permitted under Part A of Medicare, the hospital shall submit a separate claim for services performed after the date the maximum Medicare Part A benefit is exceeded. The claim may include all diagnosis codes for the entire inpatient stay, but the hospital is only required to include revenue codes, surgical procedure codes, service units, and charges for services performed after the date the Medicare Part A benefit is exceeded. A claim so submitted shall be reimbursed using the DRG payment methodology.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.74. DRG Reimbursement: Third Party Liability** DRG payments are subject to reduction based on cost avoidance under Section R9-22-1003 and other rules regarding first-and third-

party liability under Article 10 of this Chapter including cost avoidance for claims for ancillary services covered under Part B of Medicare.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.75. DRG Reimbursement: Payment for Administrative Days**

- A. Categories of Administrative Days. Administrative days fall into one of two categories, either subsection (A)(1) or (A)(2).
1. Administrative days due to lack of appropriate placement options and not meeting inpatient medical criteria. Administrative days are days in which a member is admitted as an inpatient to an acute care hospital, does not meet the criteria for an acute inpatient stay, but is admitted or not discharged because; (1) an appropriate placement outside the hospital is not available, (2) the member cannot be safely discharged or transferred, or (3) the Administration or the contractor failed to provide for the appropriate placement outside the hospital in a timely manner.
    - a. Administrative days may occur prior to an acute care episode, for example, when a woman with a high-risk pregnancy is admitted to a hospital while awaiting delivery.
    - b. Administrative days may also occur at the end of an acute care episode, for example, when a member is not discharged while awaiting placement in a nursing facility or other sub-acute or post-acute setting.
    - c. Administrative days may also include days in a receiving hospital when the member has been discharged from one acute care hospital for the purpose of receiving sub-acute services at the receiving hospital.
    - d. Administrative days do not include days when the member is awaiting appropriate placement or services that are currently available but the hospital has not transferred or discharged the member because of the hospital's administrative or operational delays.
    - e. Administrative days include inpatient claims covered by a RBHA or TRBHA that otherwise meet the criteria in subsection (A)(1).
  2. Administrative days for claims with the principal diagnosis of behavioral health meeting inpatient medical criteria. Administrative days are days with dates of discharge on or after October 1, 2018, in which a member is admitted as an inpatient to an acute care hospital, meets the criteria for an acute inpatient stay, and the principal diagnosis on the hospital claim is a behavioral health diagnosis. Inpatient claims covered by a RBHA or TRBHA are not considered administrative days under subsection (A)(2) regardless of the principal diagnosis on the hospital claim.
- B. Reimbursement of Administrative Days.
1. Administrative days under subsection (A)(1) are reimbursed at the rate the claim would have paid had the services not been provided in an inpatient hospital setting but had been provided at the appropriate level of care such as the rate paid for stays at a nursing facility.
  2. Administrative days under subsection (A)(2) are reimbursed at the daily rate found on the Inpatient Behavioral Health Capped Fee-For-Service Schedule meeting the

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criteria of "Service Description – Psychiatric Stay," regardless of revenue code.

- C. Prior authorization is required for administrative days.
- D. A hospital shall submit a claim for administrative days separate from any claim for reimbursement for the inpatient stay otherwise reimbursable under the DRG payment methodology.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 3111, effective October 1, 2019 (Supp. 19-4).

**R9-22-712.76. DRG Reimbursement: Interim Claims**

- A. For inpatient stays with a length of stay greater than 29 days, a hospital may submit interim claims for each 30 day period during the inpatient stay.
- B. Hospitals shall be reimbursed for interim claims at a per diem rate of \$500 per day.
- C. Following discharge, the hospital shall void all interim claims. In such circumstances, the hospital shall submit a claim to the payer with whom the member is enrolled on the date of discharge, whether the Administration or a contractor, for the entire inpatient stay for which the final claim shall be reimbursed under the DRG payment methodology. Interim claims will be recouped.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.77. DRG Reimbursement: Admissions and Discharges on the Same Day**

- A. Except as provided for in subsection (B), for any claim for inpatient services with an admission date and discharge date that are the same calendar date, the contractor or the Administration shall process the claim as an outpatient claim and the hospital shall be reimbursed under R9-22-712.10 through R9-22-712.50.
- B. Claims with an admission date and discharge date that are the same calendar date that also indicate that the member expired on the date of discharge shall be reimbursed under the DRG methodology.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.78. DRG Reimbursement: Readmissions**

If a member is readmitted without prior authorization to the same hospital that the member was discharged from within 72 hours and the DRG code assigned to the claim for the prior admission has the same first three digits as the DRG code assigned to the claim for the readmission, then payment for the claim for the readmission will be disallowed only if the readmission could have been prevented by the hospital.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.79. DRG Reimbursement: Change of Ownership**

The administration shall not change any of the components of the calculation of reimbursement for inpatient services using the DRG methodology based upon a change in the hospital's ownership except to the extent those components would change under the

methodology had the hospital not changed ownership (e.g., updating the hospital's cost-to-charge ratio as of September 1 of each year under R9-22-712.68).

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.80. DRG Reimbursement: New Hospitals**

- A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in subsection R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in subsection R9-22-712.62(B) shall be calculated as the statewide standardized amount after adjusting that amount for the labor-related share and the wage index published by CMS as described in subsection R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in subsection R9-22-712.62(B).
- B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in subsection R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in subsection R9-22-712.68(C).
- C. In addition to the requirement of this Section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.81. DRG Reimbursement: Updates**

In addition to the other updates provided for in Sections R9-22-712.60 through R9-22-712.80, the Administration may update the version of the APR-DRG classification system established by 3M Health Information Systems, adjust the statewide standardized amount in Section R9-22-712.62, the base payments in R9-22-712.63 and R9-22-712.64, the provider policy adjustor in R9-22-712.65, service policy adjustors in R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area. The Administration shall publish any proposed classification system on the agency's website at least 30 days prior to the effective date, to ensure a sufficient period for public comment, as required by 42 C.F.R. § 447.205. In addition, the public notice shall be available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. The requirements of 42 CFR § 447.205 as of November 2, 2015 are incorporated by reference and do not include any later amendments.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final

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rulemaking at 23 A.A.R. 2896, effective January 1, 2018  
(Supp. 17-4).

**R9-22-712.90. Reimbursement of Hospital-based Freestanding Emergency Departments**

- A.** "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 CFR 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.
- B.** A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.
- C.** For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with R9-22-712.20 through R9-22-712.30 without a percentage reduction.
1. 60 percent for a level 1 emergency department visit as indicated by CPT 99281.
  2. 80 percent for a level 2 emergency department visit as indicated by CPT 99282.
  3. 90 percent for a level 3 emergency department visit as indicated by CPT 99283.
  4. 100 percent for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.
- D.** A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the freestanding emergency department shares an ownership interest.
- E.** Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule under R9-22-710.
- F.** The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 22,  
February 11, 2017 (Supp. 16-4).

**R9-22-713. Overpayment and Recovery of Indebtedness**

- A.** If a contractor or a subcontracting provider receives an overpayment from the Administration or otherwise becomes indebted to the Administration, the contractor or subcontracting provider shall immediately remit the amount of the indebtedness or overpayment to the Administration for deposit in the AHCCCS fund.

- B.** If the funds described in subsection (A) are not remitted, the Administration may recover the funds paid by the Administration to a contractor or subcontracting provider through:
1. A repayment agreement executed with the Administration;
  2. Withholding or offsetting against current or future payments to be paid to the contractor or subcontracting provider; or
  3. Enforcement of, or collection against, the performance bond, financial reserve, or other financial security under A.R.S. § 36-2903.

**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Former Section R9-22-713 repealed, new Section R9-22-713 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714, former Section R9-22-709 renumbered and amended as Section R9-22-713 effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

**R9-22-714. Payments to Providers**

- A.** Provider agreement. The Administration or a contractor shall not reimburse a covered service provided to a member unless the provider has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.
- B.** Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
1. The provider personally furnishes the service to a specific member. For purposes of this Section, services personally furnished by a provider include:
    - a. Services provided by medical residents or dental students in a teaching environment; or
    - b. Services provided by a licensed or certified assistant under the general supervision of a licensed practitioner in accordance with 4 A.A.C. 24, 9 A.A.C. 16, 4 A.A.C. 43, or 4 A.A.C. 45;
  2. The provider verifies that individuals who have provided services described in subsection (B)(1) have not been placed on the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Services Office of the Inspector General (OIG), located at OIG's web site;
  3. The service contributes directly to the diagnosis or treatment of the member; and
  4. The service ordinarily requires performance by the type of provider seeking reimbursement.
- C.** The Administration or a contractor may make a payment for covered services only:
1. To the provider;
  2. To anyone specified in a reassignment from the provider to a government agency or reassignment by a court order;
  3. To a business agent, if the agent's compensation for the service is:
    - a. Related to the cost of processing the billing;

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- b. Not related on a percentage or other basis to the amount that is billed or collected; and
  - c. Not dependent upon collection of the payment;
  - 4. To the employer of the provider, if the provider is required as a condition of employment to turn over the provider's fees to the employer;
  - 5. To the inpatient facility in which the service is provided, if the provider has a contract under which the inpatient facility submits the claim; or
  - 6. To a foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the foundation, plan or similar organization submits the claim.
- D.** The Administration or a contractor shall not make a payment to or through a factor, either directly or by power of attorney, for a covered service furnished to a member by a provider.
- E.** Reimbursement for a pathology service. Unless otherwise specified in a contract, the Administration or a contractor shall reimburse a pathologist for a pathology service furnished to a member only if the other requirements in this Section are met and the service is:
- 1. A surgical pathology service;
  - 2. A specific cytopathology, hematology, or blood banking pathology service that requires performance by a physician and is listed in the capped fee-for-service schedule;
  - 3. A clinical consultation service that:
    - a. Is requested by the member's attending physician or primary care physician,
    - b. Is related to a test result that is outside the clinically significant normal or expected range in view of the condition of the member,
    - c. Results in a written narrative report included in the member's medical record,
    - d. Requires the exercise of medical judgment by the consultant pathologist, and
    - e. Is listed in the capped fee-for-service schedule; or
  - 4. A clinical laboratory interpretative service that:
    - a. Is requested by the member's attending physician or primary care physician,
    - b. Results in a written narrative report included in the member's medical record,
    - c. Requires the exercise of medical judgment by the consultant pathologist, and
    - d. Is listed in the capped fee-for-service schedule.

**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule is similar to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714 effective October 1, 1985 (Supp. 85-5). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 3800, effective October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

*ation in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-715. Hospital Rate Negotiations**

- A.** A contractor that negotiates with hospitals for inpatient or outpatient services shall reimburse hospitals for services rendered on or after March 1, 1993, as described in A.R.S. § 36-2903.01 and this Article, or at the negotiated rate that, in the aggregate, does not exceed reimbursement levels that would have been paid under A.R.S. § 36-2903.01, and this Article. This subsection does not apply to urban hospitals described under R9-22-718. Contractors may engage in rate negotiations with a hospital at any time during the contract period.
- B.** The Administration may negotiate or contract with a hospital on behalf of a contractor for discounted hospital rates and may require that the negotiated discounted rates be included in a subcontract between the contractor and hospital.

**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). New Section R9-22-715 adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-716. Repealed****Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

**R9-22-717. Repealed****Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3).

*Editor's Note: The following Section was originally adopted under an exemption from the provisions of the Administrative*

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*Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council. The agency was required to submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and was required to hold a public hearing. It has since been amended under the regular rulemaking process.*

**R9-22-718. Urban Hospital Inpatient Reimbursement Program**

**A. Definitions.** The following definitions apply to this Section:

1. "Contractor" has the same meaning as set forth in A.R.S. § 36-2901, and includes all contractors regardless of whether the GSA's served by the contractor includes urban or rural counties.
2. "Noncontracted Hospital" means an urban hospital, including psychiatric hospitals, which does not have a contract under this Section with a contractor.
3. "Urban Hospital" means a hospital that is not a rural hospital, as defined in R9-22-712.07, and that is physically located in Maricopa or Pima County.

**B. General Provisions.**

1. This Section applies to an urban hospital who receives payment for inpatient hospital services under A.R.S. §§ 36-2903.01 and 36-2904.
2. AHCCCS shall operate an inpatient hospital reimbursement program under A.R.S. § 36-2905.01 and this Section.
3. Residency of the member receiving inpatient AHCCCS covered services is not a factor in determining which hospitals are required to contract with which contractors.
4. A contractor shall enter into a contract for reimbursement for inpatient AHCCCS covered services with one or more urban hospitals located in the same county as the contractor.
5. A noncontracted urban hospital shall be reimbursed for inpatient services by a contractor at 95 percent of the amount calculated as defined in A.R.S. § 36-2903.01 and this Article, unless otherwise negotiated by both parties.

**C. Contract Begin Date.** A contract under this Article shall cover inpatient acute care hospital services for members with hospital admissions on and after October 1, 2003.

**D. Outpatient urban hospital services.** Outpatient urban hospital services, including observation days and emergency room treatments that do not result in an admission, shall be reimbursed either through an urban hospital contract negotiated between a contractor and an urban hospital, or the reimbursement rates set forth in A.R.S. § 36-2903.01. Outpatient services in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.

**E. Urban Hospital Contract.**

1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
  - a. Required provisions as described in the Request for Proposals (RFP);
  - b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
  - c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
    - i. The parties' agreement on arbitrating claims arising from the contract,
    - ii. Whether arbitration is nonbinding or binding,
    - iii. Timeliness of arbitration,

- iv. What contract provisions may be appealed,
  - v. What rules will govern arbitrations,
  - vi. The number of arbitrators that shall be used,
  - vii. How arbitrators shall be selected, and
  - viii. How arbitrators shall be compensated.
- d. Timeliness of claims submission and payment;
  - e. Prior authorization;
  - f. Concurrent review;
  - g. Electronic submission of claims;
  - h. Claims review criteria;
  - i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
  - j. Payment of outliers;
  - k. Claim documentation specifications under A.R.S. § 36-2904.
    - l. Treatment and payment of emergency room services; and
    - m. Provisions for rate changes and adjustments.
2. AHCCCS review and approval of urban hospital contracts:
- a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
  - b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
    - i. Availability and accessibility of services to members,
    - ii. Related party interests,
    - iii. Inclusion of required terms pursuant to this Section, and
    - iv. Reasonableness of the rates.
- F. Quick-Pay/Slow-Pay.** A payment made by a contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.

**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective January 29, 1997; pursuant to Laws 1996, Ch. 288, § 24 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 500, effective February 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1515, effective June 30, 2018 (Supp. 18-2).

**R9-22-719. Contractor Performance Measure Outcomes**

The Administration may retain a specified percentage of capitation reimbursement to distribute to contractors based on their performance measure outcomes under A.R.S. § 36-2904. The Administration shall notify contractors 60 days prior to a new contract year if this methodology is implemented. The Administration shall specify the details of the reimbursement methodology in contract.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

**R9-22-720. Reinsurance**

**A.** Reinsurance is a stop-loss program provided by the Administration to a contractor for partial reimbursement of the cost of covered services for a member with an acute medical condition when the cost of covered services exceeds a pre-determined deductible level amount within a contract year. The

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment

of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the

capped fee-for-service schedule or the statewide cost-to-charge ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and

calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H or I. The director

may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

- (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

- (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

- (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

**DEPARTMENT OF ECONOMIC SECURITY**

Title 6, Chapter 6

**New Section:** R6-6-901, R6-6-904

**Renumber:** R6-6-901, R6-6-902, R6-6-903, R6-6-904, R6-6-905, R6-6-906,  
R6-6-907, R6-6-908, R6-6-909, R6-6-910, R6-6-911

**Amend:** R6-6-902, R6-6-903, R6-6-905, R6-6-906, R6-6-907, R6-6-908,  
R6-6-909, R6-6-910



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 21, 2022

**SUBJECT: DEPARTMENT OF ECONOMIC SECURITY**  
Title 6, Chapter 6

**New Section:** R6-6-901, R6-6-904

**Renumber:** R6-6-901, R6-6-902, R6-6-903, R6-6-904, R6-6-905, R6-6-906,  
R6-6-907, R6-6-908, R6-6-909, R6-6-910, R6-6-911

**Amend:** R6-6-902, R6-6-903, R6-6-905, R6-6-906, R6-6-907, R6-6-908,  
R6-6-909, R6-6-910

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### **Summary:**

This regular rulemaking from the Department of Economic Security (Department) seeks to amend eight (8) rules in Title 6, Chapter 6, Article 9 relating to planning for and addressing instances when a Division of Developmental Disabilities (DDD) Member engages in unsafe behavior, including the creation of behavior plans and limitations on the use of certain techniques.

The Department indicates that the purpose of the rulemaking is to improve the rules related to the standard of care for vulnerable populations and enhance existing safeguards by discouraging the use of punitive and outdated behavior management techniques. The Department indicates that the updated rules reflect current professional standards and encourage development

of appropriate behavioral interventions. Additionally, the Department indicates that the rules are being updated to make the rules more clear, concise, and understandable.

The Department indicates that these rules were originally created in 1990 and last amended in 1994. The Department indicates that this rulemaking implements recommendations identified in a Five-Year Review Report (5YRR) approved by the Council on January 5, 2021.

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

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

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

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

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

The Department indicates that it did not rely on any study in conducting this rulemaking. However, the Department reviewed existing literature, including:

1. American Association of Intellectual and Developmental Disabilities “Behavior Supports”.
2. Medicaid.gov “Home and Community Based Services Final Regulation.”
3. National Association of State Directors of Developmental Disabilities Services “ASAN: Autistic Self Advocacy Network”.
4. State of Massachusetts Department of Developmental Services “115 CMR Standards and Services”.
5. “Behavior Modification Principles and Procedures” 6th edition by Raymond G. Miltenberger (2016).

4. **Summary of the agency's economic impact analysis:**

The Department indicates that the rulemaking will have a minimal economic impact on both itself and those it regulates. The Department indicates that both the Department and members of the public will benefit from the rulemaking because the rules are made more clear, concise, and understandable.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

Yes; the Department indicates that most of the requirements imposed by the rules are consistent with existing Department practices and therefore will not cause a significant increase in compliance costs. The updated training requirements may create some

additional costs to the Department; additionally, sanctions imposed for unmet training requirements may cause some Service Providers to incur additional costs.

However, the Department indicates that the updated measures are the least burdensome way to mitigate risk to the health, safety, and dignity of individuals with developmental disabilities. Furthermore, the Department indicates that the updated rules are necessary to provide the most current behavioral management guidance to Service Providers.

**6. What are the economic impacts on stakeholders?**

The Department identifies stakeholders as the Department, Division of Developmental Disabilities (DDD) members, applicants for DDD services, service providers, and the general public. The Department indicates that the rulemaking will have a minimal economic impact on such stakeholders.

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

No; between the Notice of Supplemental Proposed Rulemaking and Notice of Final Rulemaking, the Department indicated that certain outdated terminology was removed; internal citations were corrected; typographical errors were corrected; certain language was rearranged to improve clarity; and certain language was substituted to improve clarity without changing the impact or meaning of the language. Council staff believes that these changes do not amount to a substantially different rule pursuant to A.R.S. § 41-1025.

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

The Department indicates that it received public comments from over twenty (20) interested parties. Copies of these public comments, along with the Department's responses, are included in the final materials for the Council's reference.

The Department has made only non-substantive changes to the rules in response to these public comments. However, because other related rules are being revised concurrently with this rulemaking, the Department has forwarded all public comments to the appropriate teams in the Department for additional consideration.

Council staff believes that the Department has adequately addressed the comments on the proposed rules.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit, license, or agency authorization.

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

The Department indicates that there is no federal law applicable to the subject of the rule.

**11. Conclusion**

This regular rulemaking from the Department seeks to amend eight (8) rules in Title 6, Chapter 6, Article 9 relating to planning for and addressing instances when a Division of Developmental Disabilities (DDD) Member engages in unsafe behavior, including the creation of behavior plans and limitations on the use of certain techniques. The Department indicates that these rules were originally created in 1990 and last amended in 1994. Since then, the Department began this rulemaking to reflect current professional standards and encourage development of appropriate behavioral interventions. These recommendations were identified in a 5YRR approved by the Council on January 5, 2021.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



DEPARTMENT OF ECONOMIC SECURITY

*Your Partner For A Stronger Arizona*

Douglas A. Ducey  
Governor

Michael Wisehart  
Director

October 11, 2022

Ms. Nicole Sornsin  
Chairperson, Governor's Regulatory Review Council  
Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Dear Ms. Sornsin:

The attached 6 A.A.C. 6 Article 9 Managing Inappropriate Behaviors final rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for use in reviewing the rulemaking package:

**Close of Record Date:** The rulemaking record closed on June 13, 2022, following the public comment period. This rulemaking package is being submitted within the 120-day timeframe provided by A.R.S. § 41-1024(B). The Arizona Department of Economic Security (Department) scheduled and hosted an oral proceeding on June 13, 2022 and comments are addressed in Item #10 of the NFR Preamble.

**General and Specific Statutes Authorizing the Rules; Definitions of Terms Contained in Statutes or Other Rules:** General Statute: A.R.S. § 41-1954(A)(3). Implementing Statutes: A.R.S. §§ 36-552, 36-554, and 41-1092.01.

**Relation of the Rulemaking to a Five-Year Review Report:** This rulemaking is in response to a Five-Year Review Report approved by the Council on January 5, 2021.

**New Fee or Fee Increase:** This rulemaking does not establish a new fee or increase an existing fee.

**Effective Date:** The Department is requesting an effective date of 60 days from filing with the Secretary of State under A.R.S. § 41-1032(A).

**Material Incorporated by Reference:** No material is incorporated by reference in this rulemaking.

**Certification Regarding Studies:** The Department certifies that the preamble accurately discloses that no study relevant to the rules was reviewed and was not relied on in the Department's evaluation of or justification of the rules. However, the Department reviewed existing literature as identified in the Preamble.

Ms. Nicole Sornsin  
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Joint Legislative Budget Committee (JLBC) Certification: The Department was not required to make a certification to JLBC because the rule does not require any new full-time employees.

List of Documents Enclosed:

- a. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text;
- b. Economic Impact statement;
- c. Current rules;
- d. Applicable statutes; and
- e. Governor's Office approval.

If you have any questions, please contact Nicole Tolton, Rules Coordinator, Governance and Innovation Administration, at (480) 647-3107 or [ntolton@azdes.gov](mailto:ntolton@azdes.gov).

Sincerely,

*Nicole Davis*

Nicole Davis  
General Counsel & Chief Governance Officer

Enclosures

**NOTICE OF FINAL RULEMAKING**

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY**

**DEVELOPMENTAL DISABILITIES**

**PREAMBLE**

<b><u>1.</u></b>	<b><u>Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
	Article 9	Amend
	R6-6-901.	ReNUMBER
	R6-6-901.	New Section
	R6-6-902.	ReNUMBER
	R6-6-902.	Amend
	R6-6-903.	ReNUMBER
	R6-6-903.	Amend
	R6-6-904.	ReNUMBER
	R6-6-904.	New Section
	R6-6-905.	ReNUMBER
	R6-6-905.	Amend
	R6-6-906.	ReNUMBER
	R6-6-906.	Amend
	R6-6-907.	ReNUMBER
	R6-6-907.	Amend
	R6-6-908.	ReNUMBER

R6-6-908.	Amend
R6-6-909.	Renumber
R6-6-909.	Amend
R6-6-910.	Renumber
R6-6-910.	Amend
R6-6-911.	Renumber

**2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 36-554(C)(6) and 41-1954(A)(3)

Implementing statute: A.R.S. §§ 36-552, 36-554, and 41-1954(A)(1)(h)

**3. The effective date of the rule:**

In accordance with A.R.S. § 41-1032, the rules will become effective 60 days after filing with the Office of Secretary of State.

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

**4. Citations to all related notices published in the *Register* as specified in R-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 27 A.A.R. 619 on April 23, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 603 on April 23, 2021

Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 985 on May 13, 2022

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Melissa Henry

Address: Department of Economic Security

P.O. Box 6123, Mail Drop 111G

Phoenix, AZ 85005

or

Department of Economic Security

1717 W. Jefferson, Mail Drop 111G

Phoenix, AZ 85007

Telephone: (480) 647-3110

Fax: (602) 542-6000

E-mail: [rules@azdes.gov](mailto:rules@azdes.gov)

Website: <https://des.az.gov/documents-center/des-rules>

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

6 A.A.C. 6, Article 9 contains rules regarding planning for and addressing instances when

a Division of Developmental Disabilities (DDD) Member engages in unsafe behavior, including creation of behavior plans and limitations on the use of certain techniques. Originally created in 1990, this Article was last amended in 1994. The Governor's Regulatory Review Council approved a Five-Year Review Report on Chapter 6 on January 5, 2021.

The purpose of this rulemaking is to improve the rules related to the standard of care for vulnerable populations and enhance existing safeguards by discouraging the use of punitive and outdated behavior management techniques. The proposed rules reflect current professional standards in the field and encourage development of appropriate behavioral interventions for DDD members. In addition, these proposed rules will make the rules more clear, concise, and understandable by revising definitions and modernizing language.

DES engaged in supplemental rulemaking to address public comments on the Notice of Proposed Rulemaking for 6 A.A.C. 6, Article 9 published at 27 A.A.R. 619 on April 23, 2021. The Department also conducted multiple meetings with internal and external stakeholders seeking additional informal feedback to ensure that all stakeholder input has been adequately considered in crafting these rules. As a result, the Department's Notice of Supplemental Proposed Rulemaking (NSPR) for 6 A.A.C. 6, Article 9 was published at 28 A.A.R. 985 on May 13, 2022. The Department collected public comments on the NSPR between May 13, 2022 and June 13, 2022 and hosted an oral proceeding on June 13, 2022. The Department reviewed all comments received and revised the proposed rules as necessary. No substantial changes were made. This Notice of Final Rulemaking

is the result of this process.

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

The Department did not rely on any studies. However, the Department reviewed existing literature such as:

1. American Association of Intellectual and Developmental Disabilities [“Behavior Supports”](#).
2. Medicaid.gov [“Home and Community Based Services Final Regulation.”](#)
3. National Association of State Directors of Developmental Disabilities Services [“ASAN: Autistic Self Advocacy Network”](#).
4. State of Massachusetts Department of Developmental Services [“115 CMR Standards and Services”](#).
5. “Behavior Modification Principles and Procedures” 6<sup>th</sup> edition by Raymond G. Miltenberger (2016).

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

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The Department anticipates that this rulemaking will have a minimal economic impact on

it as the implementing agency, small businesses, and consumers. The Department and members of the public will benefit from the revision of Article 9 because the proposed rulemaking will make the provisions for member's behavior management more clear, concise, and understandable.

Most of the requirements of these rules are consistent with current Department practices and, therefore, will not cause a significant increase in costs for compliance either to the Department or to Service Providers, many of which are small businesses. The training requirements may cause the Department to incur some costs. Additionally, sanctions imposed if training requirements are not met may cause Service Providers to incur some costs. However, these measures are the least burdensome way to mitigate risk to the health, safety, and dignity of individuals with developmental disabilities and are necessary to provide the most current behavioral management guidance to and for Service Providers.

Finally, the consumers who will be directly impacted by this rulemaking are applicants and Members who voluntarily seek services through the Department. This rulemaking does not impose any obligation on the applicant or Member to accept or participate in services without informed consent. Members and applicants will benefit from the increased personal safety and improved protection of personal rights that come from having clear and updated rules with respect to managing unsafe behaviors.

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

The changes made in the final rulemaking are as follows:

- In 9-6-901(A), the Department removed the entry for “Direct Care Worker” because the term is no longer used in these rules. This is not a substantial change because all instances of this term in these rules have been replaced with the language in the definition found in the Notice of Supplemental Proposed Rulemaking (NSPR).
- In R6-6-901(A), the Department added an entry for the term “Inappropriate Behavior” with a citation to R6-6-901(B) where the term is defined. This is not a substantial change because it does not add a new definition. Instead, this adds an internal citation that was inadvertently omitted from the list in the published proposed rule.
- In R6-6-901(A) and R6-6-901(B), the Department replaced “Qualified Health Care Professional” with “Qualified Healthcare Professional.” This is not a substantial change because it corrects a typographical error.
- In R6-6-901(B), the definition of “Direct Care Worker” has been eliminated. This is not a substantial change because all instances of this term in these rules have been replaced with the language in the definition found in the NSPR.
- In R6-6-903, the Department added language clarifying that when the rule says that a Service Provider shall not use a technique, that technique is prohibited. The word “prohibited” is more commonly used in the field by the regulated entities to indicate that a certain technique cannot be used. This is not a substantial change because saying that a technique is prohibited is synonymous with the existing statement that a party shall not use the technique.

- In R6-6-903, the Department separated subsection (8) into two separate sections and renumbered the subsections accordingly. This is not a substantial change because it does not add any new language or remove any proposed language. It rearranges language to give clarity to the rule.
- In R6-6-905(3), the Department moved the phrase “if available” from the beginning of the subsection to the middle of the subsection to clarify the language and changed punctuation accordingly. This is not a substantial change because it does not add any new language or remove any proposed language. It rearranges language to give clarity to the rule.
- In R6-6-906(B), the Department changed “meet” to “hold a meeting” to clarify that the Program Review Committee (PRC) is required to hold a meeting to review and approve or deny Behavior Plans. This change was made at the request of public commenters. This is not a substantial change because it does not change the impact of the subsection but rather clarifies the language.
- In R6-6-906(C)(1), the term “least restrictive” has been removed. This subsection lists both “Least Intrusive” and “least restrictive” interventions as required elements of a Behavior Plan. Using both terms is redundant as they are intended to have the same meaning. The Department opted to use “Least Intrusive” because it is a defined term. This is not a substantial change because it does not change the impact or meaning of the published language.
- In R6-6-908(A), the Department separated the individuals required by a Service Provider to complete Article 9 training into three subsections. This is not a

substantial change because it does not add any new language or remove any proposed language. It rearranges language to give clarity to the rule.

- In R6-6-908(A), the term “Direct Care Worker” has been replaced with “a person who is employed or contracted to provide primary personal care, guidance, or supervision to a Member.” This is not a substantial change because the new language is taken directly from the definition of “Direct Care Worker” in R6-6-901 of the NSPR. This does not change the meaning of this subsection.
- In R6-6-910(A)(2), the word “restrictive” has been changed to “intrusive” to be consistent with the language in R6-6-906(C)(1). In this context, “restrictive” and “intrusive” are synonyms. This is not a substantial change because it does not change the impact or meaning of the published language.
- In R6-6-911(A), the Department replaced “licensed physician” with “Qualified Healthcare Professional.” The term “licensed physician” is used throughout the existing Article 9. The Department chose to replace that term with the defined term “Qualified Healthcare Professional” throughout Article 9. This change was made in the published proposed rule. This instance was unintentionally overlooked in the prior revision and is being corrected here to be consistent with the rest of the rule. This is not a substantial change because it does not change the impact or meaning of the published language.
- In R6-6-911(B)(1) and R6-6-911(B)(2)(b), the Department replaced “physician” with “Qualified Healthcare Professional.” The term “licensed physician” or “physician” is used throughout the existing Article 9. The Department chose to

replace that term with the defined term “Qualified Healthcare Professional” throughout Article 9. This change was made in the published proposed rule. These instances were unintentionally overlooked in the prior revision and are being corrected here to be consistent with the rest of the rule. This is not a substantial change because it does not change the impact or meaning of the published language.

- In R6-6-911(B)(2)(b), the Department changed “and within 24 hours” to “but no later than 24 hours after the Member experiences the side effect.” The purpose of this change is to use clearer language to explain the 24 hour limitation. This is not a substantial change because it does not change the impact or meaning of the published language.
- In R6-6-911(C), the Department replaced “Qualified Health Care Professional” with “Qualified Healthcare Professional.” This is not a substantial change because it corrects a typographical error.

**11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

During the public comment period, the Department received comments from more than 20 interested parties. Many comments expressed similar concerns or suggestions. If multiple comments were received about the same topic, the chart below contains a representative comment and the Department’s response. The Division is revising Division policies related to Article 9 concurrently with this rulemaking. Several commenters noted differences between the wording of these rules and the existing and draft Division

policies published on the Division website, including the Behavior Supports Manual which contains Division policies specific to Article 9. To the extent that definitions and other language is inconsistent between these rules and Division policies, the policies are being adjusted to conform to these rules. While only non-substantive changes were made to the proposed rules as a result of the public comments, all comments have been forwarded to the appropriate teams in the Department for any necessary consideration or action outside of this rulemaking.

<b>Comment</b>	<b>Department Response</b>
<p>If the training is supposed to be taught with the same information across the state, why is there not a master presentation for course takers to watch so that they are getting the same consistent information across the board? We are leaving it up to agencies to train Article 9, however class lengths are ranging from 1 to 3 hours in what seems to be dependent on the motivation of the trainer. Can a rule be implemented for agencies so that they cannot charge DCWs for this course? If it is a requirement for the job, why are we charging them for the certification? DCWs are required by DDD to take the training every 3 years. For those of us who have been in the field for 10+ years, at a certain point the test answers are by memory. Will there be more than the two current variations of the test available? Will the training have a database similar to DCW or can A9 be integrated into the AHCCCS DCW database so when other agencies refuse to release certifications, we can verify if a provider has already taken the training</p>	<p>Under R6-6-908(B), all Article 9 training must be taught by a Division-certified Article 9 instructor. The Division certifies Article 9 instructors to ensure that adequate training is provided to all trainees. Agencies cannot provide this training unless the person within the agency is a certified Article 9 instructor.</p> <p>To the extent that the Department could promulgate a rule to prevent a Service Provider from charging a Direct Care Worker a fee for Article 9 training, this is a matter of internal business practice that is best handled by each Service Provider based on the Service Provider's and the's employees' needs.</p> <p>Details about how training will be provided and how records of training are kept are outside the scope of this rulemaking.</p>

<p>Why is Article 9 required for parent/provider when the adult child/customer does not have any behavior issues?</p>	<p>Article 9 applies to interventions for both anticipated and unanticipated behaviors. A Behavior Plan covers anticipated behaviors. Not all Members will have a Behavior Plan. However, if an Emergency Safety Situation arises that requires use of any of the techniques covered by Article 9, all providers need to understand this Article to avoid violating it, regardless of whether a Member has a Behavior Plan.</p>
<p>Hello we have a comment regarding the new training requirements for Article 9. R6-6-908 "The training must be in-person and instructor-led in a live classroom environment to allow for interaction and discussion of the training materials. Exceptions to in-person training must be pre-approved by the Division." We believe these requirements, although well intentioned, are unduly restrictive. Particularly when considering the new post COVID and high inflation environment we find ourselves in currently and future projections not looking much better, meaning many individuals are/will be unable or unwilling to attend a 3.5 hour in person training, we also believe the cost burden has been underestimated by not taking these facts into consideration. We believe that thorough and interactive training can be accomplished remotely, and/or through hybrid training (partly online/in-person) just as well as in-person only training, for example a live Zoom classroom allows for just as much interactivity between the instructor and the students as in-person training. We have had great success with our Hybrid First Aid CPR training, allowing the Direct Care Workers to watch the 4 hour training video at their own convenience (we have seen most complete the course outside of regular business hours), and schedule their</p>	<p>R6-6-908 does not require in-person training. To the extent that Division policies address the need for in-person training, these policies are currently being revised and comments are being taken into consideration.</p>

<p>in-person component of the training themselves using our online booking calendar. When the DCW arrives for the in-person component of their training we are able to spend far more one on one time with them and address any questions they may have in a way that we are unable to do when trying to complete a packed 4+ hour in-person course. In addition we have found it beneficial to training where the Direct Care Workers are able to complete the training in multiple sessions by pausing and resuming the videos, they are better able to digest the material, rather than all the information being presented in one sitting contributing to a lack of retention. We hope you will consider these concerns when finalizing the revisions to the rule. Thank you</p>	
<p>Highly appreciate using ASAN as a reference for changing the rules. Please continue to seek out and adjust policies based on lived experience from disabled communities. Concern: "Forced Compliance" should be well defined; any new trainings should include several examples of what this looks like and positive techniques to avoid it. This is often veiled as "Maximal Prompting" in ABA protocols which is concerning as ABA is generally accepted as a "green light" technique overall- which often is used to justify use of restricted techniques.</p>	<p>The term "Forced Compliance" is defined in these rules to be "a procedure in which an individual is physically made to follow a direction or command." Because this definition is designed to encompass many specific actions, it would be impossible to include an exhaustive list of what actions would constitute "Forced Compliance." To include a non-exhaustive list would risk the incorrect interpretation that anything not specifically included on the list is meant to be excluded from the definition. Examples of "Forced Compliance" may be provided in Division policy or in training.</p>
<p>I am a certified school psychologist and have worked in special education and privately for 27 years focusing on children with learning differences and developmental delays. I feel the article 9 training needs to compassion building, clear about laws and incorporate conflict resolution and crisis prevention strategies to reduce risk of outbursts and potential</p>	<p>The Department appreciates this feedback.</p>

<p>harm to providers and individuals with delays and cognitive impairment. When I completed my Article 9 training I found it very lacking in clear, helpful information. I am also interested in offering this training but have had difficulty finding out how to be a trainer. Thank you</p>	
<p>I am taking time today to comment on the proposed rule changes to Article 9. My son is 35 years of age and is a member of ALTCS-DDD and I am concerned about numerous changes that are being proposed. As the public meetings for these changes took place during covid I do not believe it has been properly vetted by the public via Public in person forums. I suggest a delay and a few state wide forums before finalizing the proposed changes to Article 9 . As a parent who is an advocate I can say confidently that at least 50% of families never make comment or attend forums and Covid made it impossible for these families and individuals to really give comment. So lets get some input that did not require a knowledge of computers and video meetings etc. LETS HAVE A FEW MORE PUBLIC MEETINGS PLEASE. My biggest question is why now these changes? What is the reason? I have asked this question to forces that are pushing these changes and there is no serious concise reply from any of the folks who wrote these changes. As a Parent who has had to deal with Severe Behaviors in the past and present I am quite familiar with the behaviors. But it took years to get the current steps in policy implemented for my son. Its pretty simple in Policy a severe behavior happens immediately it should lead to 1) immediately get a complete medical exam for the individual to be sure that no underlying medial condition is part of the reason for the behavior. 2) Get a</p>	<p>These rules had not been revised since 1994. The purpose of this revision is to improve the rules related to the standard of care for vulnerable populations and enhance existing safeguards by discouraging the use of punitive and outdated behavior management techniques. The proposed rules reflect current professional standards in the field and encourage development of appropriate behavioral interventions for DDD members. In addition, these proposed rules are designed to make the rules more clear, concise, and understandable.</p> <p>During the years that this Article has been under revision, the Division held multiple public meetings to gather concerns and comments regarding these proposed rules. The most recent meetings were required to be virtual for the safety of Members, the public, and DES staff as the nation battled the COVID pandemic. In addition, the Notice of Supplemental Proposed Rulemaking was published in the Arizona Administrative Register and on the DES website for comment. Both contained instructions for submitting comments in writing. Further, the notice that was emailed to the more than 40,000 email addresses in the DDD database included information about how to request the draft rules in an alternate format. Regardless of whether the Department is actively conducting a rulemaking, the Department always welcomes feedback and comments</p>

<p>mental health exam completed to be sure that no underlying issues or pharmaceutical issues are triggering the severe behavior 2) Planning document get the service added to complete a Functional Behavioral Analysis completed to assist in understanding the individual and his situation and what works and does not work in helping the individual and staff cope with behavior. I would guess that out of all incident reports only a small percentage have an FBA. A FBA if done correctly and thoroughly is a short simplified document that can be given to the many direct care workers that an individual comes into contact. This FBA will help the direct care workers who have a high turnover rate to get to know the clients needs and strengths before even working with a client. The FBA can also help in crises to address severe behaviors. Whats the hurry on Article 9 revision? Lets get it right</p>	<p>on all of its rules.</p> <p>When appropriate, a functional behavioral analysis (FBA) can be a useful tool. However, it is not appropriate or useful for all Members in all situations. The need for an FBA should be determined by the Planning Team when developing the Behavior Plan based on the needs of the Member.</p>
<p>Good Evening, I'm sending along a quick note confirming my support of the Article 9 re-write. Thank you!</p>	<p>The Department appreciates this support.</p>
<p>We continue our 2021 objections to the DDD proposed Article 9 revisions. We continue to have grave concerns and objections regarding the 2022 DDD proposed Article 9 revisions.</p> <p>We find DDD's published rationale as to the need for Art. 9 to be wholly inadequate and still do not understand why Art. 9 needs to be revised. We are concerned that even the 2022 proposed revision seriously compromises the original Spirit of Article 9. It only has been 45 years since the historic 1977 settlement of the class-action lawsuit against the state that alleged horrific living conditions for residents of the Arizona Training Program.</p>	<p>These rules had not been revised since 1994. This revision is necessary to improve rules related to the standard of care for vulnerable populations and enhance existing safeguards by prohibiting the use of punitive and outdated behavior management techniques. The proposed rules reflect current professional standards in the field and encourage development of appropriate behavioral interventions for DDD members. In addition, these proposed rules are designed to make the rules more clear, concise, and understandable.</p>

<p>We are volunteers who take time out of our very busy lives to do this critical work. We have invested dozens of hours reviewing Article 9 and the proposed policies. We can only imagine how overwhelming review of the proposed Art.9 revisions and the proposed corresponding DDD Policy revisions must be for DDD Members, Self-advocates, Parents, Families and Friends that do not have our expertise. We have also been inundated with a plethora of other proposed DDD policy revisions posted in the last 2 months.</p>	
<p>We are concerned that the 2022 proposed Art. 9 revisions and proposed corresponding DDD Policy revisions are poorly drafted. Use of terminology is not consistent throughout both revisions and makes the revisions confusing and difficult to follow especially when referring to DDD Members (i.e. indiscriminately referenced in the proposed revisions as a Member, Person with an Intellectual Disability, Person with a Developmental Disability, Individual and Person), Planning Documents for DDD Members (i.e. ISP, Person Centered Plan, Service Plan and Planning Document) and Independent Oversight Committee (i.e. IOC, Human Rights Committee).</p> <p>Again, we reiterate that Individuals with intellectual and developmental disabilities (I/DD) should be assured safety and security within the context of dignity of risk, autonomy, and choice. It is essential that we promote each individual's ability to be valued, fully participating members of the community and to engage in meaningful and relevant activities. A 2018 report published by the Council on Quality</p>	<p>Terminology has been updated to be consistent with current best practices in the community as well as the terminology used in the applicable laws. Use of this terminology is consistent within these rules. As noted above, inconsistent terminology between the rules and Division policy is being resolved by revising the policy to align to the rules..</p> <p>The Department agrees that the safety and security of DDD Members and all individuals with developmental disabilities is of the utmost importance. DDD's mission is to empower Members to lead self-directed, healthy, and meaningful lives. The intent of Article 9 is to support this mission while ensuring the safety and welfare of a Member and others when an unsafe or inappropriate behavior needs to be addressed.</p>

<p>and Leadership, entitled, “Restraint, Restrictive Interventions, and Seclusion of People with Intellectual and Developmental Disabilities” notes that while hotly contested, there is inconclusive evidence of their effectiveness. In fact, the study notes that their use increases the risk of death, injury, and psychological harm not only for people with disabilities, but for the individuals employed to support them.</p> <p>Again, we remind everyone that Article 9 in Arizona historically, proactively, and positively supported the positive and adaptive behavior of individuals with I/DD. Article 9 has been used as a template for the development of best practice and model policies for supporting individuals with I/DD across the country. One example is the Jensen Settlement Agreement in Minnesota, the result of a lawsuit filed against DHS in 2009 alleging that the former Minnesota Extended Treatment Options (METO) program used restraint and seclusion in a way that broke the law and violated the rights of people with disabilities. Jensen required person-centered thinking, positive behavioral supports and serving people in the most-integrated setting consistent with the person’s goals, dreams, and aspirations. It is therefore, of great concern that the revised Article 9 would seem to allow certain elements historically prohibited.</p> <p>We have the following concerns and objections:</p>	
<p><b>Restraints, Restrictive Interventions, Response Cost, Seclusion</b></p> <p>We continue to be concerned with the following changes to Article 9:</p> <p>The following are currently stated as “shall</p>	<p>The Department has added language to the introductory paragraph of R6-6-903 to clarify that the listed techniques are prohibited.</p>

<p>not” in the 2022 proposed Art. 9 revision. However, we believe the original restriction of the unequivocal “prohibited” is stronger language and should be continued instead of replaced by the ambiguous “shall not.”</p> <p>1. Abuse or neglect a member . . .</p>	
<p>2. Use a restricted technique as a negative consequence (should be explicitly prohibited without the modifier “as a negative consequence”) . . .</p> <p>6. Physical intervention, including mechanical restraints, when used as a negative consequence (Should be explicitly prohibited without the modifier “as negative consequence”)</p>	<p>Restricted techniques and physical intervention need the modifier “as negative consequence” because these techniques may be used in a non-punitive manner if the techniques are being used in accordance with the member’s approved behavior plan.</p>
<p>8. Use techniques that in intent or execution cause physical or psychological pain or harm to a member, or are used as a form of punishment (should be explicitly prohibited without the modifier “as a form of punishment”)</p>	<p>The intent of the clause “or are used as a form of punishment” is to indicate that no technique may be used in a punitive manner. List item eight included two separate ideas: a prohibition on using techniques that cause harm to a member and a prohibition on using techniques as a means of punishment. To clarify this intent, the Department has separated those prohibitions into separate list items:</p> <p>8. <u>Use techniques that in intent or execution cause physical or psychological pain or harm to a Member;</u></p> <p>9. <u>Use techniques as a form of punishment;</u></p>
<p>The following is no longer listed as shall not or restricted. We are inquiring whether this was mistakenly left off. If it was purposely left off, what is the rationale? We continue our objection of escape extinction without rationale or justification and limitations explicitly included in the</p>	<p>Escape extinction is no longer listed as a restricted technique because it is one form of Forced Compliance, which is a restricted technique under R6-6-904. Examples of what constitutes Forced Compliance, including escape extinction, will be provided in training and Division</p>

<p>behavior treatment plan. 1. Escape extinction</p>	<p>policy.</p>
<p><i>The following are listed as restricted.</i> If the PRC allows a behavioral plan with any restricted behavioral interventions, there should be a mechanism to allow a due process review before it is allowed to be included in the plan. There should be a mechanism for the member, the parent/guardian or any other concerned party to ask for a formal review of this plan by the DDD Assistant Director.</p> <p>1. Forced compliance 2. Response Cost 3. Psychotropic Medication- should expressly include provisions for informed consent for the initial administration of any psychotropic medication, changes in doses, and screening protocols for side effects. PRN medications for the purpose of behavior management should be prohibited. 4. Restrictions to a DDD Member's rights</p>	<p>The Member and the Member's Responsible Person are part of the Planning Team that develops the Behavior Plan. Any concerns regarding the inclusion of restricted techniques in the Behavior Plan can and should be raised during the development process. The Program Review Committee (PRC) does not review a plan until it has been completed and agreed upon by the Planning Team.</p> <p>Members' rights are further protected during the review of a Behavior Plan by the PRC. The PRC includes one member who is also a member of the Internal Oversight Committee (IOC). As an IOC member, this person has received special training on the rights of DDD Members. That training helps further ensure that Members' rights are protected during PRC review.</p> <p>A Member, a Member's Responsible Person, or any other concerned person may request a secondary review of a Behavior Plan by the PRC. Current Division policy published on the Division website directs PRC how to proceed when such a request is received.</p> <p>Under R6-6-911(A)(3), Psychotropic Medication may only be prescribed and administered with the informed consent of the Member's Responsible Person.</p>
<p><b>Behavior Plans</b> We continue to concur with prior suggestions: DDD should develop and require use of a standard template for Behavior Treatment Plans with participation and input from legal</p>	<p>The Department has chosen not to impose more burden on Planning Teams by requiring the use of a particular template for drafting a Behavior Plan. The Department will accept any Behavior Plan</p>

<p>guardians, identify antecedent behaviors and ensure that the individuals developing the plan have familiarity with the individual with I/DD. We repeat that the proposed rule should require that behavior plans include documentation of proactive techniques to identify triggers, interventions to be utilized before behaviors escalate and skills training to support individuals to improve their self-regulation and/or use alternative and augmentative communication to enable them to communicate when they are stressed, in pain, etc. We believe that medical issues and conditions should be considered when developing a plan and a medical review and/or a Functional Behavioral Analysis should always be conducted if a new behavior is being addressed. We also believe that a parent/guardian or the member should approve the plan before it is implemented.</p>	<p>that meets the minimum criteria in this Article. However, to assist Planning Teams, in January 2022, the Department distributed an optional statewide Behavior Plan template and updated forms. In addition, the Division offers a “Behavior Plan Writing Workshop” that includes a sample writers guide, step-by-step instructions, and best practices for plan writers.</p> <p>A Behavior Plan is unique to the Member. Because no two Members have the exact same needs, it would not be effective or possible for the Department to mandate that all Planning Teams consider the same information, the same sources, or the same analyses in crafting all Behavior Plans.</p> <p>Regarding consideration of medical conditions in developing a Behavior Plan, medical conditions should be taken into consideration, as should all factors that contribute to a Member’s behavior. Regardless of the cause for a behavior, the purpose of the Behavior Plan is to address the behavior. Addressing any underlying medical conditions is included in the Member’s Planning Document.</p> <p>The Member and the Member’s Responsible Person are part of the Planning Team that creates the Behavior Plan. As members of the Planning Team, the Member and the Member’s Responsible Person are deeply involved in creating the Behavior Plan and must approve the Behavior Plan before it can be submitted to PRC.</p>
<p><b>Medical Issues</b> We believe a behavior should never be assumed to be just “a behavior” and that all medical issues be addressed before a behavioral plan be</p>	<p>Regardless of the cause for a behavior, medical or otherwise, the behavior needs to be addressed in a Behavior Plan. The cause for the behavior should be taken into</p>

<p>considered. Often those with I/DD have complex and co morbid conditions that may not appear in typical ways or the individual may not be able to communicate the medical issues. We believe that before a PRC Behavior Plan is written, a medical professional should review medical records/documentation to ensure the medical issues are not causing behavior in the individual with I/DD. The medical professional should identify, rule out and address all medical issues and medical treatment plans should be incorporated with any behavioral health plan written. Behavior treatment plan training should include medical issues that could contribute to behavior.</p>	<p>consideration when drafting the Behavior Plan. This is outlined in Division Behavior Supports Manual. In addition, a Member’s medical needs are covered in the Member’s Planning Document, including any complex medical conditions that may lead to behaviors.</p> <p>To the extent that a Behavior Plan addresses behaviors caused by a medical issue, R6-6-906(B)(2) requires that an individual implementing the Behavior Plan receive appropriate training, which could include training on the underlying medical concern.</p>
<p><b>PRC Membership</b> We remain concerned that the revisions to the membership prioritizing only professional credentials may result in a lack of experience and expertise in supporting individuals with I/DD. While we agree that PRCs should also include representatives with Quality Management and Behavioral Management backgrounds, it is important to maintain inclusion of representatives with experience in providing training and skill development to individuals with I/DD (habilitation providers), and District Program Management staff as voting members. We believe the PRC Team should prioritize inclusion of a provider representative, a parent representative and an adult member representative whenever possible.</p>	<p>Aside from modernizing language, the list of PRC members is not changing from the current rules. A prior draft of these proposed rules included language that could have been misinterpreted to indicate a prioritization of professional credentials, but that language was removed before publishing the Notice of Supplemental Proposed Rulemaking because it was not consistent with the Department’s intent.</p>
<p><b>Training</b> There appears to be an elimination of the requirement that all individuals within the Division and its qualified vendors complete Article 9 training. This training ensures that everyone, from front line staff to executives</p>	<p>A.R.S. § 41-1005(A)(4) indicates that directions concerning management of agency staff do not belong in rule. So, although these rules are silent about training Division staff, Division policy mandates that all Division employees</p>

<p>are aware of the importance of maintaining the human rights of individuals with I/DD. Further, it does not appear that the Behavioral Health professionals and Quality Management professionals appointed to the PRCs will be required to complete Article 9 training. We believe all individuals working directly and indirectly with DDD Members including Quality Management professionals, all PRC participants, Behavioral Health professionals and Medical professionals who are part of the behavioral health team should be required to have current Article 9 training.</p>	<p>complete Article 9 training. A copy of this Division policy is published on the Division website.</p> <p>Service Providers are required to complete Article 9 training in the rules governing specific types of Service Providers. For example, qualified vendors are required to be trained in Article 9 under the rules in Article 21 governing Qualified Vendor Agreements, and Article 15 requires providers of home and community based services to complete Article 9 training. Current Department practice is to provide Article 9 training to all PRC members. Behavioral Health professionals and Medical professionals are exempt from Article 9 under R6-6-902. Licensing and regulation of Behavioral Health professionals and Medical professionals is handled by the Arizona Department of Health Services and not DES. The Department does not have authority to impose training restrictions on these providers.</p>
<p><b>Data Collection</b> We understand that the requirement that within one working day a report must be submitted when emergency measures are utilized has been deleted from Art. 9 but is included in proposed DDD Policy. However, we believe this requirement should remain in Art. 9. Further, the reference that planning teams convene to develop a new behavior treatment plan if one does not already exist has also been deleted and should remain in Art. 9. We have been told that the Independent Oversight Committees have repeatedly requested a standardized format for reporting incidents across regions and reference to this data collection, tracking, trending, reporting and relevant changes to policies and procedures should also be</p>	<p>The referenced reporting requirement has not been deleted. Under R6-6-910(B), the Service Provider must report the use of an Emergency Measure to the Support Coordinator within 24 hours of using the Emergency Measure and to the PRC within one business day of using the Emergency Measure. The requirement to develop a new behavior plan when an Emergency Measure is used has also not been eliminated. When an Emergency Measure is used two times in a 30-day period, the Planning Team is convened to either revise the current Behavior Plan or create a new one in accordance with R6-6-910(B)(3). The Department is currently revising multiple Articles relevant to the Division. Language</p>

<p>included in any revision to Article 9. We agree with the Independent Oversight Committees on this specific request.</p>	<p>requiring creation of a Behavior Plan when needed is also being added to Article 6 regarding Program Service.</p> <p>Regarding a standardized format for incident reporting, to encourage prompt reporting, the Department does not require specific formatting. The Department does not want a Service Provider to delay submission of an incident report based solely on the need to comply with formatting requirements.</p>
<p><b>Conclusion</b> Integrating acute, behavioral, HCBS and LTSS approaches should continue to support the strengths, choices, autonomy, and integrity to supporting individuals with I/DD. The National Association of State Directors of Developmental Disabilities Services (NASDDDS) affirmed a similar position opposing aversive interventions and promoting positive behavior supports in 2015. Any revisions to Article 9 should affirmatively reject the use of interventions that have the potential to cause pain and harm, whether physical or psychological.</p>	<p>The purpose of this revision to Article 9 is to affirmatively reject the use of interventions that have the potential to cause pain and harm, whether physical or psychological. The Department continues to promote the use of positive behavior supports.</p>
<p>rule 905 does not mention person writing the rule and need to visit member 3 settings. if in rule 905 the current planning document and prior year planning documents must be submitted, in 906 approval of BTP does not mention what the procedure is if IOC finds rights violations in the planning document? Rule 911 talks about screening for TD but does not mention screening for metabolic and averse effects by 2nd generation meds.</p>	<p>The rule identifies the Planning Team as responsible for the development of the Behavior Plan. Information regarding responsibilities such as who writes, submits, and completes changes are included in the draft Behavior Supports Manual which is published on the Division website and contains Division policies related to Article 9. Best practices for developing plans, such as observing the member in multiple settings is also included in the Behavior Supports Manual.</p> <p>The Independent Oversight Committee (IOC) is an independent committee housed outside the Department. IOC has its own</p>

	<p>policies and procedures. If rights violations are found in the Planning Document or in the Behavior Plan during a PRC review, the violations are handled per IOC policy and procedure.</p> <p>Although this rule requires screening for Tardive Dyskinesia (TD) when appropriate, it also requires screening for all side effects which would include metabolic and other adverse effects. Further information regarding screenings is included in the Behavior Supports Manual published on the Division website.</p>
<p>R6-6-901 B. 8 – “Direct Care Worker” is the term used for in-home supports such as housekeeping, respite, Hab, ATC. DCWs have different training requirements and testing than Direct Support Professionals (DSPs) do. Direct Support Professional (DSP) is the term used for of HCBS service providers such as group home, day program and employment program staff. Direct Support Professionals definition should be added.</p>	<p>To clarify who is included impacted by these rules, the Department has revised R6-6-908(A) to replace FThis is the only place in these rules that “Direct Care Worker” was used. As a result, the definition of “Direct Care Worker” has been removed from R6-6-901(A) and (B).</p>
<p>R6-6-901 B. 19 – The definition of the “planning team” does not include the Qualified Vendor and is different than the list in Policy 901 line 158 which does include the qualified vendor. We would appreciate Qualified Vendor being included in both definitions.</p>	<p>Including a Qualified Vendor on the Planning Team is captured in R6-6-901(19)(e). Under that subsection, the Department can, and often does, select a representative of the Qualified Vendor to serve on the Planning Team. The rule does not provide an an exhaustive list. Others may be included on the Planning Team.</p>
<p>R6-6-903. A – This should include a provider shall not: “exploit a member”</p>	<p>Exploitation of a Member is prohibited under Article 16 and is never allowed. Article 9 addresses interventions in response to an inappropriate or unsafe behavior.</p>
<p>R6-6-910. A. 3 – This section removed the ability to use a physical intervention technique when a member is causing severe</p>	<p>The purpose of Article 9 is to safeguard the health, welfare, and safety of a DDD Member and others when addressing an</p>

<p>damage to property. Our members have expressed that they have experienced times when physical intervention was necessary when a member was causing severe property damage.</p> <p>There are circumstances in which the damage to property could also threaten a member’s safety. For example, if a member is damaging cars in a parking lot and a provider stands by – the consequences (getting attacked by a car owner, arrested by police, and so forth) of that behavior could be more severe than utilizing a standing restraint.</p> <p>Because of this, we feel this flexibility should remain within the Article 9 rules.</p>	<p>unsafe or inappropriate behavior. Property damage alone may not put a Member or other person at risk. A Service Provider may use an Emergency Measure if property damage creates a risk of imminent harm to the Member or others under R6-6-910(A)(3). To the extent that a Behavior Plan contemplates the potential for property damage and includes permissible interventions in that scenario, a Service Provider may use those interventions in accordance with the Behavior Plan.</p>
<p>Article 9 edits</p> <ul style="list-style-type: none"> <li>• P.989 "Nursing Care Institutions"- does that include SNFs and custodial nursing facilities?</li> </ul>	<p>As noted in R6-6-901(A), the term “Nursing Care Institution” is defined in A.R.S. § 36-401. This statute defines “Nursing Care Institution” as a health care institution that provides inpatient beds or resident beds and nursing services to persons who need continuous nursing services but who do not require hospital care or direct daily care from a physician. Skilled Nursing Facilities (SNFs) and custodian nursing facilities are included in this definition.</p>
<ul style="list-style-type: none"> <li>• p.991 R6-6-907: add timeframes on when the training should be completed</li> </ul>	<p>Timeframes for training depend on a variety of factors including completion of an assessment, completion of the Behavior Plan, PRC approval of the Behavior Plan, and Planning Team agreement. This information is unique to each Member and is better captured in the Member’s Behavior Plan, Planning Document, and further explained in policy.</p>
<ul style="list-style-type: none"> <li>• R6-6-908: If a BCBA completed the treatment plan, will the Article 9 instructor be expected to train the staff or the BCBA?</li> </ul>	<p>R6-6-908(B) only addresses Article 9 training, not training on a specific Behavior Plan. Each Behavior Plan</p>

	addresses who is required to provide the training specific to that Behavior Plan.
<ul style="list-style-type: none"> <li>• R6-6-908: Section D, 2- what is the timeframe expectation on recertification?</li> </ul>	R6-6-908(D)(2) requires that recertification be completed as directed by the Division. Timeframes for recertification are not to exceed three years, as outlined in the Division's Behavior Supports Manual.
<ul style="list-style-type: none"> <li>• R6-6-910: what is defined as the least restrictive method? What are the minimal credentials required for the instructors?</li> </ul>	<p>The word "restrictive" has been changed to "intrusive." Although these two words are intended to have the same meaning, as noted in R6-6-901(A), the term "Least Intrusive" is defined in R6-6-101 as "the level of intervention necessary, reasonable, and humanely appropriate to the client's needs, which is provided in the least disruptive or invasive manner possible."</p> <p>Information regarding Article 9 trainer credentials is located in the Division's Behavior Supports Manual which is published on the Division website and contains Division policies related to Article 9.</p>
<ul style="list-style-type: none"> <li>• R6-6-903 states a provider shall not use a PRN. However, on R6-6-910, it states they can use psychotropic meds for an emergency. Can you please expand or clarify? What is the PRC approval process for a PRN? How long do they approve it for and when do they re-review the use?</li> </ul>	R6-6-903 says that Service Providers are not able to routinely administer Psychotropic Medications PRNs for purposes of modifying behavior or as a Chemical Restraint. R6-6-910 addresses the use of Psychotropic Medications in response to an Emergency Safety Situation. This one-time use of a Psychotropic Medication is considered an Emergency Measure and is governed by R6-6-911. Further clarification on the use of Psychotropic Medication is provided in the Division's Behavior Supports Manual which is published on the Division website and contains Division policies related to Article 9.
<ul style="list-style-type: none"> <li>• R6-6-911: It mentions the PRC needs to</li> </ul>	The use of Psychotropic Medications for

<p>be aware of the psychotropic medications, does this mean the PRC needs to approve the use or just be aware? (C) will this need PRC approval or will the PRC need to be informed prior to administration of a one-time use?</p>	<p>the purposes of modifying behavior is considered a restricted technique under R6-6-904. Restricted techniques are required to be included in a Member’s Behavior Plan, which must be approved by PRC. Under R6-6-910, Psychotropic Medication can be used in an Emergency Safety Situation as an Emergency Measure. This one-time use is not approved by the PRC. However, if Psychotropic Medication needs to be used as an Emergency Measure two or more times in a 30-day period, the Planning Team must reconvene to determine whether the Member’s Behavior Plan needs to be revised. A revised Behavior Plan needs to be approved by PRC.</p>
<p>The AZ Legislature created the DDD Independent Oversight Committees as a result of that lawsuit. We are charged by law to be the public watch dogs who can demand transparency and accountability from DDD. This helps ensure that DDD Members never again are subjected to such horrendous living conditions and violations of their Human Rights. Art. 9 is the DDD IOC Bible. It is the very foundation of our public responsibility and it is our sacred duty to ensure that Art. 9 adequately protects the Human Rights of all DDD Members.</p> <p>A few months ago the AZ Legislature and Governor Ducey reaffirmed their commitment to the mission of the DDD IOCs by requiring that DDD afford the IOCs an additional 30 (now 60) days to review any regulation and policy changes. While we understand this law does not go into effect until 91 days after the 2022 AZ Legislative Session ends, we are concerned that DDD Assistant Director Zane Garcia Ramadan chose to follow the Letter of the</p>	<p>The Department strives to protect the rights of all Members and welcomes feedback and suggestions at all times with respect to doing so. The Independent Oversight Committees (IOCs) play a critical role and the Department appreciates these comments about the revisions to Article 9 and the process the Department used to obtain input on both the rules and related policies.</p> <p>On April 19, 2022, Governor Ducey signed S.B. 1231 into law. This bill amends A.R.S. § 41-3801 to add subsection (G) which requires the Division to give IOCs 30 days to review and provide comments on any proposed new or revised Division policy before that policy is released for public comment. This new law will become effective on September 24, 2022. There is no comparable provision in current law. Furthermore, this new law would not apply to Article 9 because it is not a policy. Revised policies corresponding to Article 9 have not yet been issued and will be shared with IOC in</p>

<p>new law rather than the Spirit and only afforded us 30 days to review the 2022 proposed Art. 9 revisions and voluminous corresponding DDD Policy revisions. We are further concerned that despite voicing our questions about the upcoming Art. 9 proposed revisions and corresponding proposed policy revisions (not shared with us until made available for public comment late afternoon on Friday, May 13, 2022) directly to DDD Assistant Director Zane Garcia Ramadan during the April DDD Statewide meeting and raising them publicly during the May 24, 2022 DDD District West IOC meeting during which today’s June 7, 2022 special meeting was scheduled, DDD Assistant Director Zane Garcia Ramadan chose this morning to offer DDD IOC Members the opportunity to have our questions answered. It is too little, too late.</p> <p>While we appreciate DDD having a 2022 Volunteer Recognition Event a few months ago, we would much prefer a productive partnership with DDD where we could trust that we are working together to safeguard the Human Rights of DDD Members as we have been tasked to do by the AZ Legislature and Governor.</p> <p>A review of recent reports from the <u>DDD Independent Oversight Committees</u> indicate that there is an overall theme in the response by individuals with I/DD to their behavioral treatment plans: a lack of trained and passionate direct care workers results in individuals with I/DD feeling that they are rushed, disrespected and as a result they engage in behaviors deemed “inappropriate”.</p>	<p>accordance with the law.</p> <p>During the years that this Article has been under revision, the Division held multiple public meetings to gather concerns and comments and to answer questions regarding these proposed rules. These revisions have been redrafted multiple times and have been published for public comment on at least two occasions, first as a Notice of Proposed Rulemaking, and then as a Notice of Supplemental Proposed Rulemaking. Regardless of whether the Department is actively conducting a rulemaking, the Department always welcomes feedback and comments on all of its rules.</p>
<p><b>Page 986, #9:</b> “minimal economic impact on it as the implementing agency, small</p>	<p>The training timelines established in these rules are designed to best ensure the</p>

<p>businesses”</p> <p>Response: QVs will need to train all DSPs in the new Art 9. With the staff shortages we are all experiencing right now, DDD will need to have an extended (1-year) time for training. Not only will we have to pull current staff off shift to take the training but we will also need to fill their shift while at training resulting in OT and possibly more unfilled shifts, this may be a financial hardship for QVs. Consider reimbursing QVs the same way we were reimbursed for Abuse, Neglect, and Exploitation training to help offset the costs.</p>	<p>health, safety, and welfare of DDD Members.</p> <p>Training costs are considered when determining reimbursement rates. The Department will consider comments regarding the request for increased reimbursement based on increased training costs during rate rebase discussions.</p>
<p><b>Page 989, # 16, b:</b> Requiring a Member to repeatedly practice a behavior by engaging in effortful behavior directly or logically related to repairing damage, caused by the Member’s behavior as a tactic to evoke behavioral change.</p> <p>Response: Does it have to be damage? You can use overcorrection for language, manners such as knocking on a door before entering, any task such as wiping a counter, etc.</p>	<p>“Overcorrection” is defined as “a group of procedures designed to reduce Inappropriate Behavior.” The remainder of that definition gives examples of what would constitute overcorrection, but it is not an exhaustive list. Overcorrection does not need to involve damage.</p>
<p><b>Page 989, # 17:</b> Physical Intervention” means a technique used on an emergency basis by an individual who is providing care or service to a Member to restrict the movement of the Member by direct physical contact to prevent the Member from seriously harming self or others</p> <p>Response: Subjective *causing harm to self or others that requires the use of first aid, CPR, hospitalization or engagement with law enforcement.</p>	<p>What constitutes serious harm may be different in different situations. The Department has chosen to use the phrase “seriously harming self or others” to allow an individual the ability to quickly assess the entire circumstance surrounding the need for intervention, even while the situation is ongoing. The purpose of using physical intervention is to prevent serious harm. Whether harm requires first aid, CPR, hospitalization, or law enforcement engagement may not be determined until after the harm has occurred.</p>
<p><b>Page 990, # C.3:</b> Behavioral Health Services under A.R.S. § 36-2939(A)(2)</p>	<p>If the Behavior Plan includes any type of restricted technique listed in R6-6-904, the</p>

<p>Response: How does this apply to services that are BH funded but provided in a DDD funded environment? Example: an FBA that evokes a behavior that is not ethical or is a violation of Art 9?</p>	<p>DDD-funded provider would need to abide by Article 9 and the restricted technique would need to be written into a Behavior Plan approved by PRC prior to implementation if the Service Provider is of a type listed in R6-6-902.</p>
<p><b>Page 990, R6-6-905-4:</b> Upon receipt of..</p> <p>Response: “If a provisional”. The way this is written it appears that all plans will receive a ‘provisional’ status</p>	<p>As written, R6-6-905(4) only applies “upon receipt of a provisional approval.” The rule does not say that all plans with receive a provisional approval. The existing language is synonymous with the language requested by the commenter.</p>
<p><b>Pg 991, R6-6-906.Program Review Committee (PRC)- A:</b> The PRC shall include the following persons designated by the Division</p> <p>Response: BX Supports includes: A DDD employee who is not part of the member’s planning team, or the plan being reviewed</p> <p>Response: “Shall” means that there would need to be a minimum of 5 members per PRC for it to be held. BX Support manual states 3 members for quorum</p>	<p>This rule refers to composition of the PRC. A PRC quorum is described in the Division’s Behavior Supports Manual which is published on the Division website and contains Division policies related to Article 9.</p> <p>The rule and the Behavior Supports Manual numbers apply to two different requirements. This rule requires that the PRC be composed of at least five individuals. The Behavior Supports Manual requires that at least three of the five PRC members be present to have a quorum, which is necessary for PRC to take any action.</p>
<p><b>Pg 991. C:</b> The PRC chairperson shall send the PRC’s written determination to the Planning Team within five Business Days of the meeting described in R6-6-906 (B)</p> <p>Response: Although noted as being in R-6-906(B) it is not.</p>	<p>The language in R6-6-906(B) has been revised to clarify that PRC is required to hold a meeting to review and approve or deny Behavior Plans.</p>
<p><b>Pg 991. C. 3. C:</b> The PRC shall only grant one extension</p> <p>Response: “PRC chair” unless the provisional process is now going to be</p>	<p>The purpose of R6-6-906(C)(3) is to add the ability for PRC to grant provisional approval for a Behavior Plan when the plan requires only technical corrections before approval. The PRC will have the</p>

<p>added to the review process for PRC. The committee would not make the determination if the extension should be granted since the committee is volunteers, not DDD employees</p>	<p>authority to extend its provisional approval of a Behavior Plan for an additional 10 business days one time if doing so is in the best interest of the Member. Although the PRC chair likely would be the person who communicates the extension to the Planning Team, the decision to extend is made by the entire PRC.</p>
<p><b>Pg 991. R6-6-907. B .3: R6-6-907(B)(2)</b> Response: There is no (B)(2) in 907. It is (D)(3)(b)</p>	<p>The reference is correct as written. R6-6-907 does not have a subsection (D), however subsection (B)(2) requires training for individuals implementing a Behavior Plan.</p>
<p><b>Pg 993: B.2:</b> Complete and provide to the PRC and as prescribed by the Division  Response: PRC chair/district email. Is the intent of this statement to add QVs sending IRs that involve the use of an ‘emergency measure’ to PRC? Which email should they go to? Who at DDD is managing this? Why does the IR email not forward the IR to the correct PRC district (internal process)?</p>	<p>This is not a new requirement. (See existing R6-6-908(B)(2).) Under these rules, the Service Provider must submit a written report to the PRC within one business day. Details such as where to send the reports are included in the applicable Division policy. Procedures that govern only internal Department processes do not belong in rules.</p>
<p><b>Pg 993: B.3:</b> Alert the Support Coordinator  Response: Who is doing this (according to Art 9 the QV is not part of the planning team)? DDD IR reporting should be responsible for this process or if it is the responsibility of the QV why can’t we just directly send (CC) the IR to the SC?</p>	<p>R6-6-910(B)(3) requires the Service Provider to alert the Support Coordinator. To allow the Service Provider to use the most efficient means based on the circumstances, this subsection does not specify how the Service Provider makes that alert. Procedures that govern only internal Department processes such as the Division incident reporting unit sending the report to the Support Coordinator do not belong in rules. This rule does not prohibit the Qualified Vendor from copying the Support Coordinator on the submission of an incident report.</p>
<p><b>Pg 993, R6-6-911. A.1:</b> Licensed physician  Response: BX supports manual uses the term: qualified healthcare professional</p>	<p>During this revision of Article 9, the Department intended to replace the term “licensed physician” with the term “Qualified Healthcare Professional”</p>

	throughout the rules. The Department inadvertently missed this instance of the old term. This oversight has been corrected.
<p><b>Pg 993, R6-6-911. B.1 Physician</b></p> <p>Response: Change to “qualified healthcare professional”</p>	During this revision of Article 9, the Department intended to replace the term “licensed physician” with the term “Qualified Healthcare Professional” throughout the rules. The Department inadvertently missed this instance of the old term. This oversight has been corrected.
<p><b>Pg 993, R6-6-911. B.2. If positive for side effects, provided as soon as it is safe to do so and within 24 hours</b></p> <p>Response: What is provided?</p>	R6-6-911(B)(2) requires that a Member be screened for side effects and specifies what is to happen with the results of that screening. The language quoted by the commenter comes from subsection (B)(2)(b) which requires that the results of the screening be provided to the prescribing Qualified Healthcare Professional.
<p><b>Pg 993, R6-6-911. B.2. Physician</b></p> <p>Response: Qualified health care professional</p>	During this revision of Article 9, the Department intended to replace the term “licensed physician” with the term “Qualified Healthcare Professional” throughout the rules. The Department inadvertently missed this instance of the old term. This oversight has been corrected.
<p>This organization is a home health care agency located in Phoenix, Arizona, that primarily serves pediatric patients, most of whom are eligible for benefits under the AHCCCS, ALTCS, or Arizona Department of Economic Security Division of Developmental Disabilities (DDD) programs. The organization is a Medicare-certified home health agency and is licensed by the Arizona Department of Health Services (ADHS) as a home health agency and by DDD as a home and</p>	As stated in R-6-6-902, Article 9 applies to all programs operated, licensed, certified, supervised, or financially supported in whole or in part by the Division in accordance with A.R.S. §§ 36-552, 36-2939, or 36-2940, and includes all Behavior Plans implemented or monitored by a Service Provider. A Behavior Plan is not required for individuals when they reside in their own or family home, whether they take psychotropic medications or not.

<p>community based service (HCBS) provider. We have been an DDD Qualified Vendor since 2006.</p> <p>We are writing to provide public comments in response to the proposed updates to the Behavior Supports Policy Manual in 6AAC6 Article 9 DDD Interventions for Unsafe and Inappropriate Behaviors (page 985). We have the following comments and concerns regarding the proposed policy.</p> <p>Rule Section 6-6-911  We request DDD amend this section of the rule to be consistent with pages 19 and 21 of the DDD Participant Guide provided during Article 9 Provider Training. The Participant Guide includes an exemption, see excerpts below, for clients residing in their own home, however the rule as written does not. The commenter requests DDD incorporate this language into this section for consistency.</p> <p>(From page 19)  BEHAVIOR PLAN  1. When does an individual need a behavior plan?  a. The team must write a plan:  for anyone prescribed a behavior modifying medication (except if living in their own or family home); or upon team decision to use any technique that requires approval, which includes any of the following:  -techniques that require the use of force,  -programs involving the use of response cost,  -programs which might infringe upon the rights of the individual  -protective devices used to prevent self-injury.</p>	<p>The language quoted by the commenter comes from the Article 9 training manual. This language explains how to implement these rules and, therefore, does not belong in the rules directly. This or similar language will continue to be included in Article 9 training.</p>
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<p>(From page 21)  The use of behavior modifying medications as ordered by a physician, as part of the treatment strategy to address/manage behavioral issues:  NOTE: This does not apply when an individual is living in his/her own home or family home.</p>	
<p>The organization appreciates the proposed update regarding prohibiting the use of behavior modifying medications. The proposed section indicates that a service provider shall not “use Psychotropic Medication as a Chemical Restraint”. Psychotropic Medications are defined as “a behavior-modifying medication that affects a member’s mental status, behavior, or perception”. We recommend DDD keep term “behavior-modifying medication” as opposed to psychotropic medication as it is more specific and accurate representation of the medication used. Psychotropic medication is overly broad and includes mind and emotion, whereas behavior modifying medication only includes behaviors.</p> <p>As a result, the definition would unintentionally restrict a providers ability to use vitamins (i.e. iron), and sleep aides (i.e. Melatonin), in a home health care setting on an as needed basis. Additionally, the way the rule is written, nurses have the ability to make these determinations for PRN medications within the scope of their license in all other settings (i.e. school, hospital, etc.) even if they have doctor’s orders for PRN medication(s). This is a well-known and unintentional Article 9 issue that we hope DDD will address in this rule change to ensure patients who require PRNs can get access to the medications</p>	<p>Although these rules have modernized the language to “Psychotropic Medication,” the intent remains the same. “Psychotropic Medication” is defined to mean behavior-modifying medication that affects a Member’s mental status, behavior, or perception. In other words, a medication can only qualify as a “Psychotropic Medication” under these rules if the medication modifies behavior, whether the medication works by impacting mental status, perception, or behavior directly.</p> <p>The Division’s Behavior Supports Manual provides further guidance that over-the-counter and herbal remedies only constitute Psychotropic Medication when being used for the purpose of behavior modification.</p>

<p>they need when they need it.</p> <p>Should DDD choose to move forward with the definition of psychotropic medications, we request further clarification regarding what specific medications meet this definition and requests that the Department's training materials regarding Article 9 and psychotropic medications be updated and disseminated with this proposed change in regulation.</p>	
<p>R-6-902</p> <p>C(3) How does this apply to services that are BH funded but provided in a DDD funded environment? Example: a FBA that evokes a behavior that is a violation of Art 9?</p>	<p>If the behavior intervention plan includes any type of restricted technique listed in R6-6-904, the DDD-funded provider would need to abide by Article 9 and the restricted technique would need to be written into a Behavior Plan approved by PRC prior to implementation. This is explained further in the Division's Behavior Supports Manual which is published on the Division website and contains Division policies related to Article 9.</p>
<p>B. Add PROVISIONALLY APPROVE</p>	<p>As written, this subsection requires that PRC deny or approve a Behavior Plan. To approve a plan can be either full or provisional approval.</p>
<p>C. Although noted as being in R-6-906(B) it is not.</p>	<p>The language in R6-6-906(B) has been revised to clarify that PRC is required to hold a meeting to review and approve or deny Behavior Plans.</p>
<p><del>R6-6-904</del>R6-6-905.ISPP</p> <p>The Planning Team Shall:</p> <p>2. Submit all new or revised Behavior Plans to the PRC for approval;</p> <ul style="list-style-type: none"> <li>● "Behavior Plans" should be changed to "Behavior Plan Packet"</li> </ul>	<p>Although the Planning Team may submit more than just the Behavior Plan to PRC, only Behavior Plan needs to be approved. The Department has retained the word "approval" because that is the ultimate goal of the submission and the ultimate outcome of PRC review even though that may take multiple revisions of the Behavior Plan.</p>

<ul style="list-style-type: none"> <li>○ Behavior Plan Packet includes: State forms, Behavior Plan, Medication Review, PCSP &amp; anything else applicable from the requirements checklist)</li> <li>○ "Approval" should be changed to "review". Not all Behavior Plans submitted are approved. Final Approval</li> <li>○ Approved with required changes</li> <li>○ Disapproved with required changes</li> </ul>	
<ul style="list-style-type: none"> <li>• There are 4-5 Behavior Plan Packets in one session</li> </ul> <p>4. b.</p> <ul style="list-style-type: none"> <li>● Should also include not to request for an extension on the that day the deficiencies (required changes) are due</li> </ul>	<p>The Planning Team may submit a request for an extension at any time under these rules. PRC should not grant the extension if that would not be in the best interest of the Member in accordance with R6-6-9(C)(3)(c). Timing of the request for extension may be a consideration when determining whether the extension would be in the best interest of the Member.</p>
<p>R6-6-906. Program Review Committee (PRC)</p> <p>3.b. The PRC shall only provide provisional approval for up to 10 Business Days. After 10 Business Days, the provisional approval shall expire and the Planning Team shall be required to resubmit the Behavior Plan for PRC approval as in R6-6-905(2).</p> <ul style="list-style-type: none"> <li>● Behavior Plan should be Behavior Plan Packet <ul style="list-style-type: none"> <li>○ Behavior Plan Packet includes: State forms,</li> </ul> </li> </ul>	<p>The purpose of provisional approval is to give the Planning Team the opportunity to correct technical deficiencies in a Behavior Plan as identified by the PRC. The mechanism the PRC uses to communicate these deficiencies is best determined by the PRC based on the multiple factors, including the number and type of the required changes. Likewise, specific details of what needs to be included in the Disposition is better suited to Division policies. These policies are currently being revised to reflect changes and requirements of these rules.</p>

<p>Behavior Plan, Medication Review, PCSP &amp; anything else applicable from the requirements checklist) &amp;</p> <ul style="list-style-type: none"><li>○ Should also state to highlight the changes or indicate on the disposition where changes are found &amp; include the disapproved Disposition with completed section:</li></ul> <p><i>If changes are required, submit the changes and a copy of this disposition to the District where the PRC was held. If the plan was disapproved, complete this section when submitting the changes. I confirm that all changes were completed as required: Yes No</i> Writer's Initials:</p> <p>Please highlight changes or indicate on disposition which pages changes are found. See page 3 for EOE/ADA disclosures</p> <ul style="list-style-type: none"><li>● Some providers are asking where is this on policy that they have to complete this section and include the disposition on the resubmission</li><li>● Some providers will only submit the Behavior Plan without the rest of the packet documents</li><li>● If a Behavior Plan is disapproved, the Behavior Plan Packet needs to be resubmitted with the required changes and a new team agreement form.</li></ul>	
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<ul style="list-style-type: none"> <li>Approval should be review</li> </ul>	
<p><b>R6-6-911.</b> <del>Behavior-modifying Medications</del> <u>Psychotropic Medication</u></p> <p>(B)(2)(c).          Provided to the <del>Program—Review Committee</del> <u>PRC</u> and the <del>Human Rights Committee</del> <u>IOC</u> within 15 <del>working days</del> <u>Business Days</u> for review of screening results that are positive.</p> <ul style="list-style-type: none"> <li>Could it also state to provide the AIMS test form and Medication Review             <ul style="list-style-type: none"> <li>Some providers just email stating there was a positive score</li> </ul> </li> </ul>	<p>The Division’s Behavior Supports Manual provides more detail about what constitutes “screening.” This may include an AIMS test and a medication review.</p>
<p>E. The Service Provider shall notify the PRC within 15 Business Days of any increase or introduction of Psychotropic Medication for a Member.</p> <ul style="list-style-type: none"> <li>If PRC Chairs are not reviewing medication changes why is PRC being notified?</li> </ul>	<p>Although PRC does not review the medications, PRC reviews the Behavior Plan which must address the use of Psychotropic Medications so PRC must be made aware of any changes that are made.</p>
<p>Emergency measures B.3 Request that the case managers Alert the Support Coordinator reconvene of the need to convene the ISPP team Planning Team to determine the need for a new or revised behavior treatment plan Behavior Plan when any emergency measure Emergency Measure is used two or more times in a 30-day period or with any identifiable pattern. Recommend that the Division track/trend/notify the support coordinator as well as QV track/trend</p>	<p>Procedures that govern only internal Department processes such as the Division tracking reports and notifying specific Division employees do not belong in rules.</p>
<p>R6-6-901</p>	<p>“Punitive” and “aversive” have the same</p>

<p>B. 3. consider punitive instead of aversive</p>	<p>meaning in this context. “Aversive” is the word used by the National Association of State Directors of Developmental Disabilities Services (NASDDS).</p>
<p>4. consider clarifying “may”</p>	<p>The word “may” is a standard word in rule writing to indicate that an action is permissive and not mandatory.</p>
<p>12. consider other word besides inappropriate, or clarify as inappropriate is subjective</p>	<p>The word “inappropriate” was chosen based on lengthy discussions with and significant input from stakeholders over the years-long rule writing process.</p>
<p>18. consider description instead of written statement</p>	<p>A “written description” and a “written statement” are synonymous. The suggested language would not change the meaning of the definition or add clarity to it.</p>
<p>R6—6-903 A. Exploitation was removed but is still referenced in training (ARS 36-569)</p>	<p>The training requirements under R6-6-908(C) represent minimum requirements. Actual training may cover additional topics. If current training conflicts with these rules, that training will be revised. The statute cited does not mention exploitation.</p>
<p>R6-6-906 A. Concerns with requiring a 5 person panel, could cause a delay in plan reviews a. Can one person represent multiple roles? b. Change shall to may c. BSM policy 906 mentions 3 members</p>	<p>The Department believes that each of the individuals listed in R6-6-906(A) brings a unique perspective that is essential to thorough review of Behavior Plans. The Department requires one representative from each of these categories. An individual may only represent one category on the PRC.</p> <p>This rule refers to composition of the PRC. A PRC quorum is described in the Division’s Behavior Supports Manual which is published on the Division website and contains Division policies related to Article 9.</p> <p>The rule and the Behavior Supports Manual numbers apply to two different</p>

	requirements. This rule requires that the PRC be composed of at least five individuals. The Behavior Supports Manual requires that at least three of the five PRC members be present to have a quorum, which is necessary for PRC to take any action.
B. remove, or define in policy - what happens on the PRC side once the plan is received?	Subsection (B) requires PRC to meet and either approve or deny all Behavior Plans. The mechanics of how PRC conducts this meeting is better suited to the Division's Behavior Supports Manual which is published on the Division website and contains Division policies related to Article 9. Subsection (C) outlines what information must be included in PRC's approval or denial of a Behavior Plan.
R6-6-910 A. 1 & 2 not clear – consider adding the least amount of physical intervention	Subsection (A)(1) addresses the amount intervention can be used whereas subsection (A)(2) addresses the intensity of the intervention that can be used. R6-6-910 applies to all interventions and not just physical interventions, but subsection (A)(1) does require use of the least amount of intervention necessary.
B. Consider law enforcement involvement not intervention	In this context, “involvement” and “intervention” are synonymous. The suggested word does not change the meaning of the rule.

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

No other matters are prescribed.

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

This rule does not require a permit.

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

Not applicable

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

No analysis was submitted.

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

None

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

Not applicable

15. **The full text of the rules follows:**

**TITLE 6. ECONOMIC SECURITY**  
**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY**  
**DEVELOPMENTAL DISABILITIES**

**ARTICLE 9. ~~MANAGING INAPPROPRIATE~~ INTERVENTIONS FOR UNSAFE AND  
INAPPROPRIATE BEHAVIORS**

Section

~~R6-6-901.~~ R6-6-901. Definitions and Location of Definitions

~~R6-6-901.~~~~R6-6-902.~~ R6-6-902. Applicability

~~R6-6-902.~~~~R6-6-903.~~ R6-6-903. Prohibitions

~~R6-6-904.~~ R6-6-904. Restricted Techniques

~~R6-6-904.~~~~R6-6-905.~~ R6-6-905. ISPP Planning Team Responsibilities

~~R6-6-903.~~~~R6-6-906.~~ R6-6-906. Program Review Committee (PRC)

~~R6-6-905.~~~~R6-6-907.~~ R6-6-907. Monitoring Implementing Behavior Treatment Plans

~~R6-6-906.~~~~R6-6-908.~~ R6-6-908. Training

~~R6-6-907.~~~~R6-6-909.~~ R6-6-909. Sanctions

~~R6-6-908.~~~~R6-6-910.~~ R6-6-910. Emergency Measures

~~R6-6-909.~~~~R6-6-911.~~ R6-6-911. Behavior-modifying Medications Psychotropic Medication

**ARTICLE 9. ~~MANAGING INAPPROPRIATE INTERVENTIONS FOR UNSAFE AND~~  
INAPPROPRIATE BEHAVIORS**

**R6-6-901. Definitions and Location of Definitions**

**A. Location of definitions. The following definitions applicable to this Article are found in the following Section or Citation:**

<u>“Abuse”</u>	<u>R6-6-901(B)</u>
<u>“Article 9 Instructor”</u>	<u>R6-6-901(B)</u>
<u>“Aversive Intervention”</u>	<u>R6-6-901(B)</u>
<u>“Behavior Plan”</u>	<u>R6-6-901(B)</u>
<u>“Behavioral Health Professional”</u>	<u>R6-6-901(B)</u>
<u>“Business Day”</u>	<u>R6-6-901(B)</u>
<u>“Chemical Restraint”</u>	<u>R6-6-901(B)</u>
<u>“Developmental Disability”</u>	<u>A.R.S. § 36-551</u>
<u>“Division”</u>	<u>A.R.S. § 36-551</u>
<u>“Emergency Measure”</u>	<u>R6-6-901(B)</u>
<u>“Emergency Safety Situation”</u>	<u>R6-6-901(B)</u>
<u>“Forced Compliance”</u>	<u>R6-6-901(B)</u>
<u>“Habilitation”</u>	<u>A.R.S. § 36-551</u>

<u>“Inappropriate Behavior”</u>	<u>R6-6-901(B)</u>
<u>“Intermediate Care Facility for Individuals with Intellectual Disabilities”</u>	<u>A.R.S. § 36-551</u>
<u>“IOC”</u>	<u>R6-6-901(B)</u>
<u>“Least Intrusive”</u>	<u>R6-6-101</u>
<u>“Managing Employee”</u>	<u>R6-6-901(B)</u>
<u>“Mechanical Restraint”</u>	<u>R6-6-101</u>
<u>“Member”</u>	<u>R6-6-901(B)</u>
<u>“Neglect”</u>	<u>A.R.S. § 36-569</u>
<u>“Nursing Care Institution”</u>	<u>A.R.S. § 36-401</u>
<u>“Overcorrection”</u>	<u>R6-6-901(B)</u>
<u>“Physical Intervention”</u>	<u>R6-6-901(B)</u>
<u>“Planning Document”</u>	<u>R6-6-901(B)</u>
<u>“Planning Team”</u>	<u>R6-6-901(B)</u>
<u>“Program Review Committee” or “PRC”</u>	<u>R6-6-101</u>
<u>“PRN”</u>	<u>R6-6-901(B)</u>
<u>“Psychotropic Medication”</u>	<u>R6-6-901(B)</u>
<u>“Qualified Healthcare Professional”</u>	<u>R6-6-901(B)</u>

<u>“Response Cost”</u>	<u>R6-6-101</u>
<u>“Responsible Person”</u>	<u>A.R.S. § 36-551</u>
<u>“Seclusion”</u>	<u>R6-6-901(B)</u>
<u>“Service Provider”</u>	<u>R6-6-901(B)</u>
<u>“Support Coordinator”</u>	<u>R6-6-901(B)</u>
<u>“Unsafe Behavior”</u>	<u>R6-6-901(B)</u>

**B.** The following definitions apply to this Article:

1. “Abuse” means the same as “Abusive Treatment” under A.R.S. § 36-569.
2. “Article 9 Instructor” means an individual approved by the Division to conduct training as outlined in R6-6-908.
3. “Aversive Intervention” means a technique intended to inflict pain, discomfort, or social humiliation to modify behavior.
4. “Behavior Plan” means an integrated, individualized, written support plan which may be based on a Behavioral Health Professional’s provisional or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of a Member, that includes:
  - a. One or more treatment goals;
  - b. One or more treatment methods;

- c. The date when the Member’s Behavior Plan is to be reviewed; and
- d. The dated signature of the Member or the Member’s legal representative;

5. “Behavioral Health Professional” means:

- a. An individual licensed under A.R.S. Title 32, Chapter 33, whose scope of practice allows the individual to:
  - i. Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251, or
  - ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101;
- b. A psychiatrist, as defined in A.R.S. § 36-501;
- c. A psychologist, as defined in A.R.S. § 32-2061;
- d. A physician, as defined in A.R.S. § 32-1401;
- e. A registered nurse practitioner licensed as an adult psychiatric and mental health nurse;
- f. A behavior analyst, as defined in A.R.S. § 32-2091; or
- g. A registered nurse with:
  - i. A psychiatric-mental health nurse two differentiating certification, or

- ii. One year of experience providing behavioral health services.
- 6. “Business Day” means Monday through Friday, excluding holidays listed in A.R.S. § 1-301.
- 7. “Chemical Restraint” means medication administered as a method of restricting a Member’s freedom of movement, physical activity, or access to the Member’s own body that is not routine treatment for a Member’s medical or behavioral health condition.
- 8. “Emergency Measure” means the one time use of Psychotropic Medication, a crisis team, law enforcement intervention, or Physical Intervention, in an Emergency Safety Situation.
- 9. “Emergency Safety Situation” means unanticipated Unsafe Behavior.
- 10. “Forced Compliance” means a procedure in which an individual is physically made to follow a direction or command.
- 11. “Inappropriate Behavior” means a Member’s actions which a Behavioral Health Professional, Service Provider, or Planning Team reasonably believes to be impeding an individual’s ability to interact in a socially acceptable manner as detailed in behavioral goals put forward in the Planning Document.
- 12. “IOC” means an Independent Oversight Committee, established under A.R.S. § 41-3801.

13. “Managing Employee” means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of a Service Provider.
14. “Member” means the same as “Client” as defined in A.R.S. § 36-551.
15. “Overcorrection” means, for the purpose of this Article, a group of procedures designed to reduce Inappropriate Behavior. Overcorrection includes:
- a. Requiring a Member to improve the environment to a state better than existed prior to the occurrence of the Inappropriate Behavior; or
  - b. Requiring a Member to repeatedly practice a behavior by engaging in effortful behavior directly or logically related to repairing damage caused by the Member’s behavior as a tactic to evoke behavioral change.
16. “Physical Intervention” means a technique used on an emergency basis by an individual who is providing care or service to a Member to restrict the movement of the Member by direct physical contact to prevent the Member from seriously harming self or others.
17. “Planning Document” means a written statement of services that is separate from the Behavior Plan and is provided to a Member, including Habilitation goals and objectives, that is developed following an initial eligibility determination and revised after periodic reevaluations.

18. “Planning Team” means a group of people including:
- a. The Member;
  - b. A Responsible Person;
  - c. The Support Coordinator;
  - d. Other State of Arizona Department of Economic Security staff, as necessary; and
  - e. Any person of responsible age and capacity selected by the Member, Responsible Person, or the Department.
19. “PRN” means administered as circumstances require but not on a regular schedule.
20. “Psychotropic Medication” means behavior-modifying medication that affects a Member’s mental status, behavior, or perception.
21. “Qualified Healthcare Professional” means an individual with the authority to prescribe medication under A.R.S. Title 32.
22. “Seclusion” means, for the purpose of this Article, restricting a Member to a room or area, through the use of locked doors or any other device or method that precludes the Member from freely exiting the room or area, or that a reasonably prudent person would believe precludes the Member from freely exiting the room or area. In the case of a community residence, restricting a Member to the residential site, according to specific provisions of a Planning Document,

Qualified Health Professional's orders, temporary law enforcement directive, or court order, does not constitute Seclusion.

23. "Service Provider" means any individual or entity as defined in A.R.S. § 36-551 as well as Division staff who administer direct services to Members.

24. "Support Coordinator" means the same as "Case Manager" as defined in A.R.S. § 36-551.

25. "Unsafe Behavior" means a Member's action or activity, whether intentional, unintentional, or negligent, that causes a risk of imminent harm to the Member or others.

#### **~~R6-6-901~~R6-6-902. Applicability**

These rules apply to:

- ~~1. All programs operated, licensed, certified, supervised or financially supported by the Division.~~
  - ~~2. All habilitation programs as defined in A.R.S. § 36-551(18), as well as all interventions included in this Article, shall be addressed in the client's ISPP.~~
- A.** This Article applies to all programs operated, licensed, certified, supervised, or financially supported in whole or in part by the Division in accordance with A.R.S. §§ 36-552, 36-2939, or 36-2940, and includes all Behavior Plans implemented or monitored by a Service Provider in accordance with this Article.
- B.** For services provided in healthcare institutions as listed in R9-10-102(A), this Article only applies to the following:

1. Intermediate Care Facilities for Individuals with Intellectual Disabilities; and
2. Nursing Care Institutions;

**C. This Article does not apply to:**

1. Health and medical services authorized under A.R.S. § 36-2939(A)(5);
2. Dental services authorized under A.R.S. § 36-2939(A)(6); or
3. Behavioral Health Services under A.R.S. § 36-2939(A)(2)

**~~R6-6-902-R6-6-903.~~ Prohibitions**

**~~A.~~ The following behavioral intervention techniques are prohibited:**

- ~~1. The use of seclusion (locked time-out rooms).~~
- ~~2. The use of overcorrection.~~
- ~~3. The application of noxious stimuli.~~
- ~~4. Physical restraints, including mechanical restraints, when used as a negative consequence to a behavior.~~

**~~B.~~ The use of behavior modifying medications is prohibited, except as specified in ~~R6-6-909~~, if:**

- ~~1. They are administered on an “as needed” or “PRN” basis; or~~
- ~~2. They are in dosages which interfere with the client’s daily living activities; or~~
- ~~3. They are used in the absence of a behavior treatment plan.~~

**~~C.~~ No person shall implement a behavior treatment plan which:**

- ~~1. Is not included as a part of the ISPP; and~~
- ~~2. Falls under ~~R6-6-903(A)~~, without approval of the PRC.~~

The following are prohibited and a Service Provider shall not:

1. Abuse or Neglect a Member;
2. Use a restricted technique under R6-6-904 with a Member as a negative consequence;
3. Use Psychotropic Medication as a Chemical Restraint;
4. Use Overcorrection;
5. Seclude a Member;
6. Use Physical Intervention, including Mechanical Restraints, when used as a negative consequence for a behavior;
7. Use Aversive Intervention;
8. Use techniques that in intent or execution cause physical or psychological pain or harm to a Member;
9. Use techniques as a form of punishment; or
10. Administer Psychotropic Medication "as needed" or "PRN".

**R6-6-904. Restricted Techniques**

A Service Provider is permitted to use the following techniques when the techniques are included in a Behavior Plan approved by the PRC and only in the manner specified in the approved Behavior Plan:

1. Forced Compliance;
2. Response Cost;
3. Administration of Psychotropic Medication for the purposes of behavior modification unless an exception is granted by the Division; or

4. Restrictions to a Member's rights as specified in A.R.S. § 36-551.01 or other applicable laws.

**~~R6-6-904~~R6-6-905. ISPP Planning Team Responsibilities**

~~Upon receipt of the PRC's response and as part of its development of the client's ISPP, the ISPP team shall either:~~

- ~~1. Implement the approved behavior treatment plan; or~~
- ~~2. Accept the PRC recommendation and incorporate the revised behavior treatment plan into the ISPP; or~~
- ~~3. Reject the recommendation in whole or in part and develop a new behavior treatment plan to be resubmitted to the PRC and Human Rights Committee.~~

The Planning Team shall:

1. Participate in the development of a Behavior Plan to modify a Member's Unsafe Behaviors or Inappropriate Behaviors to improve the Member's quality of life;
2. Submit all new or revised Behavior Plans to the PRC for approval;
3. Submit the current Planning Document and, if available, all Planning Documents from the prior year to the PRC with the documents from subsection (2) of this Section;
4. Upon receipt of provisional approval of a Behavior Plan from the PRC:
  - a. Correct all deficiencies and resubmit the Behavior Plan to the PRC within 10 Business Days; or

- b. If the Planning Team is unable to correct all deficiencies in the Behavior Plan within 10 Business Days, submit a written request for an extension of the provisional approval from the PRC; and
- 5. Comply with the determination of the PRC or participate in redeveloping the Behavior Plan for resubmission to the PRC.

**~~R6-6-903;R6-6-906.~~ Program Review Committee (PRC)**

- ~~A. The ISPP team shall submit to the PRC and Human Rights Committee any behavior treatment plan which includes:
  - 1. Techniques that require the use of force.
  - 2. Programs involving the use of response cost.
  - 3. Programs which might infringe upon the rights of the client pursuant to applicable federal and state laws, including A.R.S. § 36-551.01.
  - 4. The use of behavior-modifying medications.
  - 5. Protective devices used to prevent a client from sustaining injury as a result of the client's self-injurious behavior.~~
- ~~B. The PRC shall be responsible for approving or disapproving plans specified in subsection (A) above and any other matters referred by an ISPP team member.~~
- ~~C. The PRC shall review and respond in writing within ten working days of receipt of a behavior treatment plan from the ISPP team, either approving or disapproving the plan. The response shall be signed and dated by each member present and shall be transmitted to the ISPP team with a copy to the chairperson of the Human Rights Committee for~~

~~review and recommendations at its next regularly scheduled meeting pursuant to R6-6-1701 et seq. The response shall include:~~

- ~~1. A statement of agreement that the interventions approved are the least intrusive and present the least restrictive alternative.~~
- ~~2. Any special considerations or concerns including any specific monitoring instructions.~~
- ~~3. Any recommendations for change, including an explanation of the recommendations.~~

**D.** ~~Each PRC shall issue written reports, as prescribed by the Division, summarizing its activities, findings and recommendations while maintaining client confidentiality.~~

- ~~1. On a monthly basis, report to a designated Division representative, with a copy to the chairperson of the Human Rights Committee.~~
- ~~2. On an annual basis, by December 31 of each calendar year, report to the Assistant Director of the Division of Developmental Disabilities, with a copy to the Developmental Disabilities Advisory Council.~~

**E.** ~~The PRC shall be composed of, but not be limited to, the following persons designated by the District Program Manager:~~

- ~~1. The District Program Manager or his designee, who shall act as a chairperson.~~
- ~~2. A person directly providing habilitation services to clients.~~
- ~~3. A person qualified, as determined by the Division, in the use of behavior management techniques, such as a psychologist or psychiatrist.~~

- ~~4. A parent of an individual with a developmental disability but not the parent of the individual whose program is being reviewed.~~
  - ~~5. A person with no ownership in a facility and who is not involved with providing services to individuals with developmental disabilities.~~
  - ~~6. An individual with a developmental disability when appropriate.~~
- F.** ~~A PRC shall be separate from but a complement to the ISPP team, and the Human Rights Committee established pursuant to R6-6-1701 et seq.~~
- A.** The PRC shall include the following persons designated by the Division:
1. A Division employee who shall act as the PRC chairperson;
  2. A person qualified in the use of behavior management techniques, such as a Behavioral Health Professional;
  3. A member of the IOC;
  4. A Service Provider representative; and
  5. A community member from at least one of the following categories:
    - a. A parent of an individual with a Developmental Disability who is not the parent of the Member being reviewed;
    - b. A person with no personal or professional relationship with the Division;  
or
    - c. An individual with a Developmental Disability.

**B.** The PRC shall hold a meeting to review and approve or deny all submitted Behavior Plans.

**C.** The PRC chairperson shall send the PRC's written determination to the Planning Team within five Business Days of the meeting described in R6-6-906(B).

1. PRC approval of a Behavior Plan shall include:

a. A statement of agreement that the interventions approved are the Least Intrusive interventions and that the interventions are in compliance with R6-6-904;

b. Any special considerations or concerns including specific monitoring instructions; and

c. Any formatting or PRC procedural or documentation changes that are required to be made consistent with the Behavior Plan's provisional approval and prior to the revised Behavior Plan being resubmitted to the PRC for reconsideration of full approval.

2. PRC denial of a Behavior Plan shall include:

a. The reason for denial;

b. Recommendations for changes to the Behavior Plan; and

c. An explanation of the recommendations.

3. The PRC may provide provisional approval that allows the Behavior Plan to be implemented.
  - a. The PRC shall only provide provisional approval for Behavior Plans identified in Subsection (C)(1)(c).
  - b. The PRC shall only provide provisional approval for up to 10 Business Days. After 10 Business Days, the provisional approval shall expire and the Planning Team shall be required to resubmit the Behavior Plan for PRC approval as in R6-6-905(2).
  - c. Upon receipt of a written request for an extension of a provisional approval of a Behavior Plan, the PRC shall grant an additional 10 Business Day extension if doing so is in the best interest of the Member. The PRC shall only grant one extension per Behavior Plan. Upon expiration of the extension, the Planning Team shall be required to resubmit the Behavior Plan for PRC approval as in R6-6-905(2).

**~~R6-6-905~~R6-6-907. ~~Monitoring~~ Implementing Behavior Treatment Plans**

~~Each ISPP team shall specifically designate and record in the ISPP the name of a member of the team, excluding those direct service staff responsible for implementing the approved behavior treatment plan, who shall:~~

- A. After a Behavior Plan is approved or provisionally approved by the PRC, the Division shall identify all Service Providers subject to the Behavior Plan and provide a copy of the Behavior Plan to those Service Providers within 10 Business Days.

**B.** A Service Provider identified in R6-6-907(A) shall:

1. Ensure that the ~~behavior treatment plan~~ Behavior Plan is implemented as approved: by the PRC;
2. Ensure that all ~~persons~~ individuals implementing the ~~behavior treatment plan~~ Behavior Plan have received appropriate training as specified in ~~R6-6-906~~R6-6-908 and as specified in the Member's Behavior Plan;
3. Maintain training records of all individuals specified in R6-6-907(B)(2);
4. Evaluate, at least monthly, collected data and other relevant information as a measure of the effectiveness of the Behavior Plan;
- ~~3-5.~~ Ensure that objective; and accurate data are maintained in the ~~client's~~ Member's record; and
4. ~~Evaluate, at least monthly, collected data and other relevant information as a measure of the effectiveness of the behavior treatment plan.~~
- ~~5-6.~~ Conduct on-site observations of the implementation of the Behavior Plan not less than at least twice per month once per month per Member in each Division-supported congregate setting where the Behavior Plan is being implemented and prepare, sign, and place in the ~~client's~~ Member's record a report of all observations.

**~~R6-6-906~~R6-6-908. Training**

- ~~A.~~ Any person who is involved in the use of a behavior treatment plan shall be trained by the Division or trained by an instructor approved by the Division prior to such involvement.
- ~~B.~~ Initial training shall cover at a minimum:

1. ~~Provisions of law related to:~~
    - a. ~~Interventions; particularly this Article and 42 CFR 483.450 (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;~~
    - b. ~~Legally mandated rights of individuals with developmental disabilities; particularly A.R.S. §§ 36-551.01, 36-561 and 42 CFR 483.420 (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;~~
    - c. ~~Confidentiality; particularly A.R.S. §§ 41-1959 and 36-586.01 and 42 CFR 483.410(e)(2) (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State.~~
    - d. ~~Abuse and neglect prohibitions pursuant to A.R.S. § 36-569.~~
  2. ~~Intervention techniques, treatment and services, particularly addressing the risks and side effects that may adversely affect clients.~~
  3. ~~A general orientation to:~~
    - a. ~~Division goals with respect to the provision of services to people with developmental disabilities.~~
    - b. ~~Related policies and instructions of the Division.~~
- C. ~~With respect to the use of interventions, training shall include hands-on or practical experience to be conducted by instructors approved by the Division, using a curriculum approved by the Division, and who have experience in the actual use of interventions as opposed to administrative responsibility for such use.~~

- ~~D. In addition to initial training, the Division shall ensure that refresher training is available as necessary to maintain currency in knowledge and recent technical trends related to intervention for the management of inappropriate behavior.~~
- ~~E. Physical management techniques shall only be used by those persons specifically trained in their use.~~
- ~~F. The following records and documents related to training shall be maintained by the Division for five years and be available for public inspection.~~
- ~~1. A summary of the training plan adopted by the Division in compliance with this Section, including schedules, instructors, topics, and expressed parameters of the hands-on or practical experience component of the training.~~
  - ~~2. Required special knowledge, skills, training, education or experience of the instructors related to managing inappropriate behaviors.~~
  - ~~3. A list of persons satisfactorily completing initial and refresher courses and course dates.~~
- ~~G. The Division shall review the training plan at least every two years for compliance with all applicable provisions of law and Division policy as well as for the protection of clients.~~
- A. A Service Provider shall ensure successful completion of Article 9 training by all:
1. Managing Employees;
  2. Persons who are employed or contracted to provide primary personal care, guidance, or supervision to a Member; and

3. Supervisors of persons employed or contracted to provide primary care, guidance, or supervision to a Member.

**B.** All training under this Article shall be taught by an Article 9 Instructor with a current certification as an Article 9 Instructor from the Division.

**C.** Article 9 training shall include:

1. The requirements, restrictions, and purpose of this Article;
2. Interventions, including those described in this Article;
3. Members' rights as prescribed in statute, rule, and Division policy;
4. Confidentiality requirements; and
5. Division policies and procedures relating to this Article.

**D.** Article 9 training shall be completed:

1. For initial training, within 90 calendar days of hire or before working directly with Members without supervision from someone with a current certification in Article 9, whichever is earlier; and
2. For recertification in Article 9 as directed by the Division.

**~~R6-6-907~~R6-6-909. Sanctions**

~~For programs operated, licensed, certified, supervised or financially supported by the Division, failure to comply with any part of this Article may be grounds for suspension or revocation of a~~

~~license, for termination of contract, employment, or for any other applicable administrative or judicial remedy.~~

The Division may impose sanctions for failure to comply with any part of this Article, including:

1. Suspension or revocation of a license or certification;
2. Termination of a contract;
3. Prohibition against contact with Members; and
4. Any other administrative, contractual, or judicial remedies.

**~~R6-6-908;R6-6-910.~~ Emergency Measures**

A. ~~Physical management techniques employed in an emergency to manage a sudden, intense, or out-of-control behavior~~ Interventions used during an Emergency Safety Situation to manage a sudden, intense, or out-of-control behavior shall be:

1. ~~Use the~~ The least amount of intervention necessary to safely ~~physically~~ manage an ~~individual~~ Emergency Safety Situation;
2. ~~Be used~~ Used only when less ~~restrictive~~ intrusive methods were attempted and were unsuccessful or are inappropriate;
3. ~~Be used~~ Used only when necessary to prevent the ~~individual~~ Member from harming self or others ~~or causing severe damage to property;~~
4. ~~Be used concurrently with the uncontrolled behavior.~~
- 5.4. ~~Be continued for~~ Implemented during the Emergency Safety Situation for the least amount of time necessary; and to bring the individual's behavior under control.

~~6.5. Be appropriate to the situation to ensure safety. Performed only by individuals trained by an instructor currently certified by the Division in the implementation of Division-approved intervention techniques.~~

B. When an ~~emergency measure~~ Emergency Measure, including the use of Psychotropic Medications pursuant to ~~R6-6-909(D); R6-6-911(C)~~ or law enforcement intervention, is employed to manage a sudden, intense, out-of-control behavior, the ~~person~~ Service Provider employing that ~~measure~~ Emergency Measure shall:

1. ~~Immediately~~ As soon as it is safe to do so and within 24 hours, report the circumstances of the ~~emergency measure~~ Emergency Measure to the person designated by the Division and to the ~~responsible person~~ Responsible Person.
2. ~~Complete and provide to the PRC and as prescribed by the Division~~ Provide, within one ~~working~~ Business day Day, a ~~complete~~ written report of the circumstances of the ~~emergency measure~~ Emergency Measure to the ~~responsible person~~ the case manager, the chairperson of the Program Review Committee, and the Human Rights Committee.
3. Request that the case managers Alert the Support Coordinator ~~reconvene~~ of the need to convene the ~~ISPP team~~ Planning Team to determine the need for a new or revised ~~behavior treatment plan~~ Behavior Plan when any ~~emergency measure~~ Emergency Measure is used two or more times in a 30-day period or with any identifiable pattern.

**C.** Upon receipt of an alert specified in (B)(3) of this Section, the Support Coordinator shall reconvene the Planning Team to consider the need for a new or revised Behavior Plan as soon as possible but not later than 30 Business Days after receiving the alert.

**~~C.D.~~** Upon receipt of a written report as specified in subsection (B)(2) ~~above~~, the PRC shall:

1. Review, evaluate, and track reports of ~~emergency measures~~ Emergency Measures taken; and
2. Report, to a person designated by the Division, instances of possible excessive or inappropriate use of ~~emergency measures~~ Emergency Measures on a case-by-case basis for corrective action.

**~~R6-6-909. R6-6-911. Behavior-modifying Medications~~ Psychotropic Medication**

**~~A.~~** ~~The Division shall make available the services of a consulting psychiatrist who shall review cases and provide recommendations to prescribing physicians to ensure that the medication prescribed is the most appropriate in type and dosage to meet the client's needs.~~

**~~B.A.~~** ~~Behavior-modifying medications~~ Psychotropic Medication shall be prescribed and administered only:

1. When, in the opinion of a ~~licensed physician~~ Qualified Healthcare Professional, ~~they~~ Psychotropic Medication will be effective in ~~producing an increase in appropriate behaviors;~~ assisting a Member in meeting the goals of the Planning Document and it can be justified that the need of Psychotropic Medication to assist in meeting these goals ~~harmful effects of the behavior~~ clearly outweigh

outweighs the potential negative effects of the ~~behavior-modifying medication~~  
Psychotropic Medication;

2. As part of a ~~behavior treatment plan in the ISPP~~ Behavior Plan unless there is an exception granted by the Division; and
3. With the informed consent of the ~~responsible person~~ Responsible Person.

**C.B.** The Division shall provide the following monitoring, in addition to that specified in ~~R6-6-905~~ R6-6-907, for all ~~behavior treatment plans~~ Behavior Plans that include the use of a ~~behavior-modifying medication~~ Psychotropic Medication:

1. Ensure that collected data relative to the ~~client's~~ Member's response to the medication is evaluated, at least quarterly, at a medication review by the ~~physician~~ Qualified Healthcare Professional and the ~~member of the ISPP team designated pursuant to R6-6-905, the Service Provider, and~~ other members of the ~~ISPP team~~ Planning Team as needed.
2. Ensure that each ~~client~~ Member receiving a ~~behavior-modifying medication~~ Psychotropic Medication is screened for side effects, and Tardive Dyskinesia as needed, and that the results of such screening are:
  - a. Documented in the ~~client's~~ Member's case record;
  - b. ~~Provided immediately~~ If positive for side effects, provided as soon as it is safe to do so, but no later than 24 hours after the Member experiences the side effect, to the ~~prescribing physician~~ Qualified Healthcare Professional, ~~responsible person~~ Responsible Person, and ~~ISPP team~~ Planning Team for appropriate action ~~if the screening results are positive~~; and

c. Provided to the ~~Program Review Committee~~ PRC and the ~~Human Rights Committee~~ IOC within 15 ~~working days~~ Business Days for review of screening results that are positive.

~~D.C.~~ In the event of an ~~emergency~~ Emergency Safety Situation, a ~~physician's~~ Qualified Healthcare Professional's order for a ~~behavior modifying medication~~ Psychotropic Medication may, if appropriate, be requested for a specific one-time emergency use. The person administering the medication shall, immediately as soon as it is safe to do so and within 24 hours, report it ~~pursuant to R6-6-908(B)~~ the use of Psychotropic Medication as specified under R6-6-910(B).

~~E.D.~~ The Service Provider shall, as soon as it is safe to do so and within 24 hours, notify the responsible person Responsible Person shall, ~~immediately be notified of any changes in medication type or dosage~~ increase or introduction of Psychotropic Medications for a Member.

~~E.~~ The Service Provider shall notify the PRC within 15 Business Days of any increase or introduction of Psychotropic Medication for a Member.

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY - DEVELOPMENTAL**

**DISABILITIES**

**ARTICLE 9. MANAGING INAPPROPRIATE BEHAVIORS**

**1. Identification of the rulemaking:**

Article 9 contains rules regarding planning for and addressing instances when a Division of Developmental Disabilities (DDD) Member engages in unsafe behavior, including creation of behavior plans and limitations on the use of certain techniques. The purpose of this rulemaking is to improve the standard of care for vulnerable populations and enhance existing safeguards by discouraging the use of punitive and outdated behavior management techniques. These proposed rules reflect current professional standards in the field and encourage development of appropriate behavioral interventions for DDD members. In addition, these proposed rules will make the rules more clear, concise, and understandable by revising definitions and modernizing language. The Department last amended this Article in 1994. A Five-Year Review Report on Chapter 6 was approved by the Governor's Regulatory Review Council on January 5, 2021.

**2. The person to contact to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

Name: Nicole Tolton  
Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 111G  
Phoenix, AZ 85005

or

Department of Economic Security

1717 W. Jefferson, Mail Drop 111G

Phoenix, AZ 85007

Telephone: (480) 647-3107

Fax: (602) 542-6000

E-mail: [rules@azdes.gov](mailto:rules@azdes.gov)

Website: <https://des.az.gov/documents-center/des-rules>

**3. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:**

The persons directly impacted by this rulemaking are the Department, Service Providers, DDD Members, and applicants for DDD services. Most of the requirements of these rules are consistent with current Department practices and, therefore, will not cause a significant increase in costs for compliance either to the Department or to Service Providers, many of which are small businesses. The training requirements may cause the Department to incur some costs related to providing trainings or developing materials for training, as well as monitoring fulfillment of training requirements as appropriate. Additionally, sanctions imposed if training requirements are not met may cause Service Providers to incur some costs from loss of the ability to serve members or the cost of remedying the infraction that led to the sanction. However, the measures in these rules are the least burdensome way to mitigate risk to the health, safety, and dignity of individuals with developmental disabilities and are necessary to provide the most current behavioral management guidance to and for Service Providers.

Consumers who will be directly impacted by this rulemaking are applicants and Members who voluntarily seek services through the Department. This rulemaking does not impose any obligation on the applicant or Member to accept or participate in services without informed consent. Members and applicants will benefit from the increased personal safety and improved protection of personal rights that come from having clear and updated rules with respect to managing unsafe behaviors.

**4. Cost-benefit analysis:**

**a. Costs and benefits to state agencies directly affected by the rulemaking:**

There is no significant fiscal impact to state agencies directly affected by the rulemaking. There is no significant programmatic or membership change anticipated as a result of these changes.

**b. Costs and benefits to political subdivisions directly affected by the rulemaking:**

This rulemaking has no economic impact on political subdivisions; therefore, there is no cost or benefits to political subdivisions by this rulemaking.

**c. Costs and benefits to businesses directly affected by the rulemaking:**

Not applicable

**5. Impact on private and public employment:**

None

**6. Impact on small businesses:**

**a. Identification of the small business subject to the rulemaking:**

There will be minimal negative impact on small business. Service Providers contracted with the Division are subject to these rules and the requirements of the

rules. The requirements for training and monitoring of Members by Service Providers were already present in the original rule. To the extent that training requirements are more specific, small businesses may incur minimal costs associated with ensuring staff have met training requirements. In addition, there may be costs associated with sanctions imposed because of the potential inability to serve Members or associated with remedying the issues that led to the sanction. Neither training requirements nor sanctions are new to these rules, but both are more clearly delineated in these proposed rules.

**b. Administrative and other costs required for compliance with the rulemaking:**

There are minimal administrative or other costs required to comply with this rulemaking. The potential administrative costs include development of updated training materials and monitoring of compliance with improved training requirements.

**c. Description of methods that may be used to reduce the impact on small businesses:**

**i. Establish less costly or less stringent compliance or reporting requirements:**

Not applicable.

**ii. Establish less costly schedules or less stringent deadlines for compliance:**

Not applicable.

**iii. Consolidate or simplify compliance or reporting requirements:**

Not applicable.

**iv. Establish separate performance standards:**

Not applicable.

**v. Exempt small businesses from any or all requirements:**

Not applicable.

**7. The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:**

No cost is associated with this for private persons or consumers. This Article provides a framework and criteria for safe and dignified methods to provide care to vulnerable individuals with developmental disabilities who also have behavioral health challenges. These proposed rules will significantly benefit these individuals by providing clearer guidelines for what is permitted and what is prohibited when providing care, and by better safeguarding the health, safety, welfare, and rights of individuals with developmental disabilities.

**8. Probable effects on state revenues:**

None

**9. Less intrusive or less costly alternative methods considered:**

There is no less intrusive or less costly method of achieving the objectives of the rulemaking.

**a. Monetizing of the costs and benefits for each option:**

Not applicable

**b. Rationale for not using non-selected alternatives:**

Not applicable

**10. Description of any data on which the rule is based:**

Not applicable



GRRC - ADOA &lt;grrc@azdoa.gov&gt;

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**DES/DDD Article 9 Study for GRRC from District Central Independent Oversight Committee**

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Linda Mecham &lt;lsmecham@yahoo.com&gt;

Sun, Nov 27, 2022 at 11:00 PM

To: "grrc@azdoa.gov" &lt;grrc@azdoa.gov&gt;

To Nicole Sornsin, Simon Larscheidt, and Members of the GRRC Committee:

By way of introduction, I am Linda Mecham, currently serving as DDD District Central IOC Chair. Our son, Mark, was served by DDD for 43 years, until his passing last year. I got involved with the IOC (then, the Human Rights Committee) because I had an issue with Mark's Day Program Provider. I presented our issue to the Committee, the Committee thought they could help, and then invited me to join. That was in 2002.

For nearly 40 years, Article 9 has been the guiding light for not only all things DDD in the state of Arizona, but also a template that many other states have followed to insure that these individuals with developmental disabilities/intellectual disabilities, are treated with respect and dignity, rather than the institutional model which was rampant with abuse and neglect, as well as physical and chemical restraints. As the years have passed, and as more information has become available regarding the many issues these individuals face in their daily lives, policy has been updated to reflect the needs, That has always worked because Article 9 is Principle based. Because Article 9 is a basic set of principles, that allow for change, through either additions or deletions to policy, to fit specific needs or circumstances as they arise, changes in (or complete rewrites to) the original Article 9 are totally unnecessary because Article 9 establishes the parameters for the what can and cannot be done. Those basic

parameters do not change in order for anyone to have a life of dignity and respect.

The path the IOCs have taken to get us to this point has been a rocky one. DDD told us that they did not think we were working with them in good faith. I was involved with the second rewrite. While serving on that committee, and because we were making changes to the "Attorney General" approved rewrite, I asked if this rewrite would need to go back to the Attorney General's office. I was told that it never went to the AG's office, whereas we were told previously that it was at the AG's office for their review. When I questioned that, I was told that DDD's internal stakeholders reviewed it. We were never told who the internal stakeholders were, or their expertise, either DDD or legal. I soon realized that not only were we working on Article 9, but we were also working on the policies to support the new Article 9. I felt that was presumptuous, as we didn't even have the Article 9 approved, and that if they were truly working within a time frame for completion from ADOA, how did they have time to write policy? (No answer to that question.) Upon completion of the second rewrite, which was several months ago, we continued to ask DDD how the Article 9 update was progressing. We were repeatedly told it was in progress. In our recent Statewide IOC meeting, we asked DDD Director Zane Garcia-Ramadan about the Article 9 update. He told us it had been sent to GRRC! We were stunned. In the "spirit of working together", and for all of the time we had invested in Article 9, we thought we were going to be able to review it before it went to GRRC. I don't know if DDD is required by law to put the second rewrite out for public comment, but given the negative comments from families, agencies, and providers, I thought that DDD should have done that. Article 9 affects everyone in the DDD community, and if so many people are willing to take the time to send in comments, I would think that in "good faith", DDD would present the final document to the public. MANY changes needed to be made. Zane did tell us,

after announcing that it had been sent to GRRC, that he would send us a copy of the final draft, which he did a few days later, and that he would also let us know when it was coming up for review by GRRC. I bookmarked GRRC in the Google search so that I could check on it myself...I didn't trust him to let us know.

Senator Barto suggested that I send our Annual Report to you so that you can have a glimpse into what we do, as well as an extensive review of both Article 9 and the Abuse and Neglect curriculum for the Members. We have been very involved in both of these in order to protect the members. The Article 9 report contains our comments and concerns for the original rewrite, and the Abuse and Neglect curriculum attachment also has our questions, DDD's non answers, and then our follow-up questions to them. The bottom line was that this inappropriate curriculum was presented to the DDD individuals in the Day Program setting (generally, and per policy) for a year, and then they would review it. The only data they collected was whether a DDD member took the curriculum. We have had many reports from parents regarding the inappropriate behavior that is new to their child/adult that was not being displayed prior the presentation of this curriculum.

I realize that the Abuse and Neglect curriculum is not the issue at hand. I included it in our annual report because it is something we have been heavily involved with for the past 15 months. I point it out to you as a illustration of how DDD has "listened" to us, but then continues to implement something that is clearly wrong for these DDD individuals. I fear that if the current version of Article 9 goes through, the doors are unlocked to returning AZ back to institutional homes for these precious individuals who have potential for growth, for opportunity to experience life, and to be loved in a home environment, whether their natural homes or in a group setting with individuals who become their families. Article 9, as it currently exists, provides for that, and has for the

past 40 years. It is the backbone of everything the IOCs do, everything we read, and everything we defend. It still works. I have likened it to my friends and colleagues..."Article 9 is like the Ten Commandments. They are old, but they are still relevant."

I look forward to being able to express some thoughts at Tuesday's meeting. I don't know how to sign on to do that, but would very much like to do so.

Thank you,  
Linda Mecham



**IOC Annual Report 2021-2022 Final.docx**  
95K

# ARIZONA

## INDEPENDENT OVERSIGHT COMMITTEE

November 1, 2022

The Honorable Karen Fann  
President, Arizona State Senate  
1700 West Washington Street  
Phoenix, Arizona 85007

The Honorable Russell Bowers  
Speaker, Arizona House of Representatives  
1700 West Washington Street  
Phoenix, Arizona 85007

Dear President Fann and Speaker Bowers,

On behalf of the DDD Central Independent Oversight Committee, please find the 2021-22 Annual Report that outlines our committee's activities and recommendations. The report was prepared in accordance with the requirements of A.R.S. § 41-3804(H).

Thank you for your continued support of the committee volunteers that are protecting those in need.

Sincerely,  
Linda S. Mecham  
Chair

cc: Nancy K. Barto, Senate Health and Human Services Committee Chairman  
Jami Snyder, Director of Arizona Health Care Cost Containment System  
Mike Faust, Director of Arizona Department of Child Safety  
Don Herrington, Interim Director of Arizona Department of Health Services  
Michael Wisheart, Director of Arizona Department of Economic Security  
Joanne Osborne, House of Representatives Health and Human Services Committee

**Department of Economic Security  
Division of Developmental Disabilities**

***DISTRICT CENTRAL  
INDEPENDENT OVERSIGHT  
COMMITTEE***

***2021-2022 ANNUAL REPORT***

**DISTRICT CENTRAL**  
**Independent Oversight Committee**  
**Membership 2021-2022**

Linda Mecham, Chairperson, Family Member/Education/Advocate

Sherry Howard Wilhelmi, Vice-Chair, Family Member/Advocate

Tina Buetner, Parent/Advocate

Eva Hamant, Parent/Advocate

Mandy Harman, Member

Carol McNulty, Parent/Advocate

Andrea Potosky, Parent

Michael Sandefer, Parent/Special Education/Family Advisor

Debbie Stapley, Parent/Advocate

Carolyn Wilmer, Family Member/Health Care

Lisa Witt, School Psychologist/Family Member

Euarda Yates, Parent/Advocate

The District Central Independent Oversight Committee reviews, by law, all incidents of abuse, neglect and human rights violations of the members who reside in Central Arizona. Revised Statute 41-3801 defines and explains the duties of the Independent Oversight Committees:

**A. The independent oversight committee on persons with developmental disabilities is established in the department of administration to promote the rights of clients who are receiving developmental disabilities services pursuant to title 36, chapter 5.1.**

**B. The committee shall be organized pursuant to this section and the requirements of section 41-3804.**

**C. The director of the department may establish additional committees for each district office established pursuant to section 41-1961 or to oversee the activities of any service provider.**

**D. Each independent oversight committee established pursuant to this section shall consist of at least seven and not more than fifteen members appointed by the director of the department with expertise in at least one of the following areas:**

- 1. Psychology.**
- 2. Law.**
- 3. Medicine.**
- 4. Education.**
- 5. Special education.**
- 6. Social work.**
- 7. Criminal justice.**

**E. Each independent oversight committee shall include at least two parents of children who receive services from the division of developmental disabilities.**

**F. The division of developmental disabilities shall provide to each independent oversight committee information regarding incidents of:**

- 1. Possible abuse or neglect or violations of rights.**
- 2. Physical abuse, sexual abuse and other abuse.**
- 3. Accidental injury.**
- 4. Missing clients.**
- 5. Behavioral emergency measures.**
- 6. Medication errors, including theft of medication or missing medication.**
- 7. Death.**
- 8. Suicide attempts.**
- 9. Hospitalizations.**
- 10. Incarcerations.**
- 11. Theft of client property or money.**
- 12. Property destruction.**

**G. The Division of Developmental Disabilities in the Department of Economic Security must allow the Independent Oversight Committee on persons with development disabilities thirty days to review new policies and major policy changes before the Division submits the policies or changes for Public Comment.**

This Fiscal Year, there were 7,758 Incident Reports for District Central IOC, while the number of Members served in District Central was 9,643, as of June 30, 2022. Additionally, 447 Behavior Treatment Plans were reviewed in District Central.

### **DDD MEMBERS WITH EXTREME BEHAVIORS/ARIZONA STATE HOSPITAL**

As the IOC reviews both the Incident Reports and the Behavior Treatment Plans, we become aware of issues that need to be addressed. One such issue was the fact that 2 District Central Members served by the Division are currently residing at the Arizona State Hospital. They are not given the opportunity for Active Treatment, they are locked in seclusion, and per the Incident Reports, are heavily medicated to control their behaviors and activity. We have been informed that because of the severity of the behaviors, it would be inappropriate to house these individuals outside of ASH. We are currently requesting a quarterly update on these individuals. Additionally, because Active Treatment is not being offered, and because they are not Cognitively able to understand why mechanical restraints are used on them or why they are in locked seclusion, (both of which are prohibited for DDD Members per Article 9, because Article 9 does not apply to ASH), we are asking the Division several questions: How much money is being sent to ASH to care for these individuals? Could this same amount of money be used to provide a setting (home) outside of ASH where they could get the rights afforded to them per Article 9, and still be in a safe environment, both for them and the community? This issue is a fairly new one, and we will continue to pursue it in the coming year. We are also in early discussion with the ASH IOC as well.

In addition to the two members at ASH, it has also been a concern that there are DDD members who have severe behavioral health concerns and that it is very difficult to work with them in the group home setting. After reading the Behavior Treatment Plans, and reviewing them in the Program Review meetings, the strategies and methodologies in the plan are not working with some of these individuals. These members are also taken to ASH, which is also very concerning. We believe that facilities are needed which can be locked, and then hire staff who have received a higher level of training for this complex level of care. DDD has a step-down unit, but it is currently occupied. There needs to be more than just one. When we asked DDD if anyone is looking into a resolution for these members with the severe behaviors, we were told that DDD leadership is working with the leadership from the two health plans (United Healthcare and Mercy Care) to be able to develop better residential options for DDD members who have these more extreme challenges. There are options involving "step-down" units for behavior, but, as stated previously, vacancy is a problem. Per DDD, This is a big topic and warrants additional conversation at a broader level with the Health Plans. Group Homes are staffed with individuals that are not trained to deal with these extreme behavioral needs. This is an issue District Central IOC will continue to pursue.

Another possible solution to this issue, as discussed by one of our IOC members, is that she is working with a group of mental health practitioners who are training to serve our DDD members. The goal is to provide an acute care system that bridges care after hospitalization, providing temporary placement for DDD members, better care in and reduced stays at an ER, as well as placement for lower IQ, aggressive individuals.

## **TRANSGENDER ISSUES IN GROUP HOMES**

Through attendance at Program Review Committee, we became aware of two members who are dealing with transgender issues. We have asked what DDD's policy is on transgender members in group homes. The staff expressed difficulties working with these individuals, and that they were not equipped to work with them. This is an issue we will continue to pursue in the coming year.

## **CLIENT FUNDS AND SERVICES**

A pretty consistent issue that is noted while attending Program Review Committee is that the Member's funds are over the \$2,000.00 limit, as allowed by AHCCCS/ALTHCS. The Spending Plans that we see are those members whose representative payee is either a Public Fiduciary or DDD. If ALTHCS reviews the bank account, and the member is over the threshold, the member could lose all services. AHCCCS/ALTHCS has been very lenient during the COVID period, and given the fact that most members received additional funds during this time. However, they are starting to request accountability again, and it would be devastating for the members to lose all services, through no fault of their own. The DDD policy, as we understand it, is that Client Funds notifies the team when the funds are at \$1000.00, to begin a spend-down plan. At \$1500, they team is notified again and the spend down should be completed before the individual reaches the \$2000. The problem was that the Support Coordinators were not given access to the member's accounts in order to review. All information came from Client Funds. Recently, access to view the Member's account was "unlocked" to the Support Coordinator, which allowed a more timely review of funds so that a timely spend down can occur if needed. Additionally, a new policy is out for public comment at this time regarding this issue, and that the Support Coordinator is allowed to approve expenditures up to \$499. Any expense above \$499 will need a supervisor's approval. I would like to think that District Central IOC bringing this issue to DDD's attention had something to do with the new direction and policy!

## **DENTAL CARE CONCERNS AND SEDATION**

District Central IOC was contacted by a family who was having difficulty getting dental treatment for their son, who is an individual served by DDD. We discovered that many dentists state that if the patient has a trach or any serious medical concerns, the treatment would need to be performed at a hospital.

Currently, St. Joseph's Hospital is the only hospital that offers this service. However, because the reimbursement from the health plans is not sufficient, St. Joseph's limits the number of dental cases performed. There are many members on the waiting list. This issue has been elevated to AHCCCS as a care concern.

A representative from United Healthcare reported that they are working closely with AHCCCS through updates from DDD for other ways that dental and anesthesia can be provided outside of a dental office and in an operating room or a facility that provides the same services available and allows the dental provider as well as an anesthesiologist to come on board and provide services. Banner is a current partner and they are currently discussing opportunities, but the health plans are also working with St Joseph's to gain more information as to how or why there has been a limitation

on providing dental services. The health plans are also working with the dental college, as well as other facilities who would be willing to work with an anesthesiologist. Prior authorizations are being received by United Health Care, and they will follow through until the services are provided, working to ensure that the appointments are scheduled in a timely manner.

### **AMMONIA TOXICITY FROM DEPAKOTE (VALPROIC ACID)**

District Central IOC received a report from a member that her son was in the hospital due to Ammonia Toxicity from his medication, Depakote. As the committee continued the discussion, it was learned that of the 11 members on the committee, 5 of us had a son or daughter, on Depakote, and 4 of the 5 had been hospitalized for ammonia toxicity. The 5<sup>th</sup> member's doctor had her daughter's blood serum levels regularly checked for the toxicity. By the time we could get a doctor's attention that this was not normal behavior, hospitalization was needed. We determined that if this issue was affecting nearly half of our committee, it should be an issue elevated to Dr. Dekker, DES medical director. He was kind enough to come to our next meeting, having researched the subject, including the number of DDD members taking Depakote. He reported the seriousness of the side effects, and that about 20% of the members could be affected by this medication. In addition to the information that was sent out by DES/DDD to families and providers to be aware of this medication and possible side effects, we, as IOC members sitting on the Program Review Committee, notice if a member is taking Depakote. If he is, we remind the team of the importance of getting the serum levels in order to prevent the ammonia toxicity. (A build-up of ammonia in the liver)

### **PAIN SCALE**

The Pain Scale is a topic that we have been discussing for several years. We sent a letter to DDD, requesting information on the pain scale assessment tool, and were told that there was, at that time, no pain scale assessment tool. It was recommended that DDD implement this into the system. There are times when DDD members have behaviors, but the team needs to make sure that the behaviors are not because of pain. Most often, the only way to determine this is through the use of a pain scale. Frequently, behaviors are treated with medication, and then more medication, however the cause could be because of pain, which is not resolved with the introduction of more psychotropic medications.

Because we have been discussing this for several years, to no avail, District Central IOC made a motion, listing our concerns, and requesting that DES/DDD develop a pain scale, also a section in the "Risk Assessment" section of the Person Centered Planning Document, which indicates that in some situations, members who are non-verbal, may communicate by hitting themselves to indicate they are in pain. A written explanation in the Planning Document of what the pain indicators are should also be included so that staff will not automatically assume the member is having a behavior and that there is a need for additional medication.

Dr. Dekker attended the following meeting, expressed his appreciation for bringing this important issue to his attention, and then explained several pain scale assessments that could be implemented for the members served by the Division, depending on cognitive

and language skills, leaning heavily towards the FLACC scale, (Face, Legs Activity, Cry, and Consolability) for DDD members.

Additionally, Arizona Senate Bill 1162 (from this last session, thank you Senator Barto!) provides that the pain management providers that are working with known chronic pain members can continue to prescribe pain medication without fear of prosecution. Also, The US Supreme Court determined that pain management is a human right and that as a right it cannot be taken away. The member can be treated for pain if the parent or guardian asks for a stronger than prescribed pain medication. This can no longer be blocked.

Because of this recent ruling, we will request that because pain management is a human right, that it be added into DDD policy as well as Article 9.

### **POST COVID RETURN TO DAY PROGRAMS**

It was learned that in spite of CDC guidelines and the American Disability Act, there were still Day Programs that were not allowing members to attend unless masks were worn. Many members served by the Division do not understand the rationale for masks, are tactically sensitive and cannot wear a mask, or have breathing issues where the mask is inappropriate. When the agencies were contacted by parents, informing them that they were not in compliance with the CDC guidelines, as well as violating the ADA, they still refused attendance unless the member was wearing a mask, all day. Even though this was brought to DDD's attention, the issue continued. Families and group homes either kept the member at home, or found other placement if available.

Another issue that came to our attention was that because of staffing issues, members could not return to the Day Program or Work program, especially if that member had an enhanced ratio staffing.

DDD is using the American Rescue Plan funds to increase the direct care staff salaries, so hopefully that will allow more members to return to their Programs.

### **PERSON CENTERED SERVICE PLAN**

DDD has adopted a new document, which will replace the former Individual Service Plan, and is now called the Person Centered Service Plan. DDD reported that this document is a plan that AHCCCS built, with other managed care organizations. Our IOC was concerned with several items: that this new document loses some of the important information that was formerly in the Individual Service Plan, and in our opinion, is necessary to include in order to have a complete picture of the individual, such as "History of the Individual" and "What Works and Doesn't Work for Me". Additionally, the Spending Plan is located in a drop down menu, and often times the Support Coordinator is not aware that it is available, and so it is missing. There needs to be additional training for the Support Coordinators, and families need to be aware of the changes. For example, if information from the old ISP is not included in the new PCSP, a family can request that it be included. However, this requires a very active, diligent, and aware parent/guardian to realize the difference. DDD should make this information available to families.

Previously, in the 90 day meetings which review and update the Person Centered Service Plan, required by AHCCCS, unless it was the Annual Review, the meetings only took about 15-30 minutes. With the new PCSP, the meetings are lasting approximately 2 hours, every 90 days.

Additionally, the Behavior Treatment Plan contains information that the PCSP does not contain. However, not every member has a Behavior Plan. District Central would like to see consistent information required for each member. The only way to ensure that this happens is for it to be included in the Person Centered Service Plan.

### **ARTICLE 9**

District Central has been actively involved in the drafts of the proposed Article 9. Attached to this Annual Report are the questions and concerns that we had regarding the proposed Article. In spite of repeatedly asking what the current status is, DDD's response is that they have no updates since the second Public Comment time period expired. We are still waiting for and extremely interested in the final draft, as Article 9 is the basis for what we, as an Independent Oversight Committee, follow to ensure that the rights and protections of the individuals served by the Division of Developmental Disabilities are secure and in place.

### **ABUSE AND NEGLECT CURRICULUM**

As a result of the sexual abuse and resulting pregnancy of a DDD Member, residing at Hacienda, Governor Ducey requested a curriculum for abuse and neglect awareness. A committee was formed, which determined a curriculum for Providers and Staff (Direct Care Workers) which would provide guidelines to recognize, avoid, and report any incidents of abuse and neglect. In addition to the curriculum for the Providers, a second curriculum was adopted from the state of Massachusetts, for the Members served by DDD.

District Central IOC has no issue with the curriculum for the Providers. We do, however, have many concerns about the curriculum for the Members served by the Division. We did not become aware of this curriculum until after it had become policy and was actually being distributed and taught. We discovered that the portion of Policy for the Member Curriculum that went out for Public Comment was merely a summary of the curriculum, not the content in its entirety. Upon review of the content, we noted that, first, it is twice as long as the curriculum for the Providers. The examples used to explain a point are extremely beyond the cognitive levels of the general DDD population. Secondly, the policy states that while the curriculum for the Providers MAY be used, the curriculum for the Members MUST be used in teaching the curriculum. (It cannot be tailored for the needs and cognitive level of the individual being taught.)

Additionally, the course will be taught in the Day Program. Our concern was who would be teaching this curriculum? What credentials does the instructor have? What if there are PTSD effects that result from this curriculum? (If a member has been previously abused, would this curriculum trigger memories that most Direct Care Staff providers are not equipped to handle?)

When we asked DDD what data they were collecting as a result of this curriculum, the response was *whether the member had taken the course or not*. We were speechless! No additional data, such as post-instructional behaviors that are new.

We were instructed to draft our questions and send them via a motion to the DDD Director. We did, and the responses from DDD were less than satisfactory. IOC was then told that our recourse was to have a phone conversation with the Director, which we did. At this point, the curriculum had been in circulation for about 6 months. We were told, basically, that they were going to continue to present the curriculum until the one year anniversary. (July 2022) At that point DDD would have the curriculum go out for Public Comment again, at which point changes could be made.

During the past year, we have read Incident Reports and have heard from parents that their child is now exhibiting new sexual behavior. When we asked if Quality Management could follow up with whether the individual named in the Incident Report had taken the Course, we were told that it was beyond their “scope of investigation”. When we elevated this concern, we were told that “Behavioral Health was involved.”

The guardians must give permission for this curriculum to be presented to the individual. We have spoken to numerous parents who weren’t even aware of what the curriculum was. As previously state, the Member Curriculum content that went out for Public Content was a SUMMARY of the content, so even if a parent was following the new policies being adopted by DDD, they would not have been able to review the entire content. (We still have not received an answer to our question as to whether a “summary” of a policy is sufficient to meet the legal standards of notification prior to adoption.) We shared the link with the families (which is difficult to navigate) and many contacted us to thank us for sharing the information and, upon their review, noted that permission would not be given. Regarding the permission forms, each agency created their own form. One form was 3 pages long, which included the link for the curriculum, as well as additional sites for better information; a second form was one page, which included the link; a third form was a simple permission form which contained no information regarding the curriculum. We suggested that DDD provide a consistent permission form, especially to reduce liability, as well as collect more data than just attendance.

Just to give you an example of the activities used to present the concepts: the Member is handed an umbrella and told to hold the umbrella over his/her head. The Presenter then throws popcorn on top of the member. The Member is supposed to understand the *symbolism* in this activity: The umbrella represents the information in the course, that will protect him/her from being abused. The popcorn represents the abuse from which they are being protected. This is an abstract concept symbolically, and not one that easily comprehended by most DDD members.

There are concepts taught in this curriculum, slides presented, and activities to participate in, which could so very easily introduce ideas not yet considered by the members (i.e. suicide), or trigger PTSD reactions that a Day Program staff is not prepared to address. Also, as stated previously, the Provider curriculum is not the same as the Member curriculum, which leads us to ask, “Who is training the Instructor to present this curriculum? Does the Instructor take both classes, as they are different? Why is there a need for two different curriculums?”

Needless to say, District Central is VERY CONCERNED about this curriculum. Our questions, DDD's responses, and our follow-up questions are attached to this document.

### **LEGISLATIVE ASSISTANCE**

As a result of not being aware of the Abuse and Neglect Concern, and knowing that the Developmental Disabilities Advisory Council has a provision regarding notification of Proposed Policies, we asked Senator Barto to propose legislation that would give IOC's the same privileges that the DDAC has regarding the review of policies before they go out for public comment. She did propose (SB 1231 an addition to ARS 38-4101, letter G: The Division of Developmental Disabilities in the Department of Economic Security must allow the Independent Oversight Committee on persons with development disabilities thirty days to review new policies and major policy changes before the Division submits the policies or changes for Public Comment.)

This will give us the opportunity to review the policies, and then meet as a body to discuss and vote on our remarks. When we did not have the additional 30 days, we were not always able to meet as a body to discuss and vote per the Open Meeting Law.

This additional time allows for that.

We thank Senator Barto for her continued support, for her concern for the Members served by the Division, including the Behavioral Health members, and the needs these individuals have for additional care and support. We also thank the entire Legislature for passing the Bills proposed by Senator Barto, and others, and look forward to continued cooperation as we all work to better the lives of Arizona citizens served by DDD.

### **INTRODUCTION OF NEW MEMBERS**

We appreciate the assistance we have received from both DDD and the community as we work to improve and increase our IOC membership. This year we have gained 3 new members, who come with a variety of experience and knowledge, which gives our committee a greater base for understanding and thoughtful discussion as we review Incident Reports and Behavior Plans, while always seeking to protect the rights of the individuals served by DDD.

While we gained three new members, we lost a very dear friend this year, our fearless leader of so many years, Karen VanEpps, who succumbed to breast cancer.

A few tributes from our IOC members:

"Karen Van Epps search for help for her sister with developmental disabilities led to her becoming a champion advocate for all of us the past 40+ years. She tirelessly worked publicly and within the Division of DD recommending and/or changing policy that infringe on the rights of the DD population. Karen always strived for "quality of life" services and the fundamental right to be treated with dignity and respect. Everyone in the community of DD has directly or indirectly benefited from Karen's extensive advocacy. It has been a privilege to have worked with Karen on the Human Rights Committee (now IOC) and we tremendously miss her. " Carol McNulty

“Even though I have a severely disabled daughter that has been in the DDD system for over 30 years, I really didn't know a whole lot about the inner workings of that system. I was asked to join the then titled "Human Rights Committee" by Linda Mecham. I didn't know what I was getting myself into! As I timidly attended my first meeting of the District Central Committee, Karen approached me with a warm welcome, a smile and words of encouragement. She taught me so much! Everyone was always throwing out names and acronyms with ease and I was usually lost, but Karen was always so patient and knowledgeable and answered my questions without making me feel inferior or dumb. I was always in awe of her dedication and enthusiasm as she worked tirelessly for this under-served population. Every time that I mentioned a problem that Amy was experiencing at her group home, Karen went to great lengths to help me find ways to solve the issue. She would call me several days later to see how things were going and if we had resolved the problem. I have always said that even though having a handicapped child is a challenge, with it comes many blessings. One of those blessings was getting to work with and know Karen. She will always be my hero!” Debbie Stapley

“The DDD community lost its most enduring advocate this year. Karen was a friend to all in need, a warm voice on the phone, and the source of calm and reason in sometimes chaotic times. She never wavered in pursuit of bettering lives and in doing what is right above all.” Sherry Howard Wilhelmi

“Karen VanEpps was a true advocate for as long as I knew her. She was involved in getting Partners in Policymaking started in AZ. She was involved in The Arc of Arizona and Arizona Consortium for Children with Chronic Illness. I got to know Karen better working with her on the Human Rights Committee/Independent Oversight Committee. she worked tirelessly for Persons With Intellectual Disabilities and advocated at the AZ legislature for the issues that were an issue raised at HRC/IOC. She put long hours in volunteering in a variety of capacities helping Persons With Intellectual Disabilities and informing members of the committees to be better advocates for Persons With Intellectual Disabilities.” Eva Hamant

“I was having an issue with my son's Day Program. I didn't know if what they were asking me to do was appropriate, so a friend suggested that I attend the Human Rights Committee Meeting. I was very nervous, but presented my concerns. Karen was the chair, and when I finished my remarks, she said she thought they could do something about this and would be getting back in touch with me. As I got up to leave, Karen thanked me for coming, and then asked me if I wanted to join the Committee! I knew about this committee, and no, I didn't want to join!! But I thought that if they were going to help me, the least I could do is join! And that was the beginning of a friendship that I don't think will ever be replaced. I learned that Karen and her Mother were very involved, as were so many others, from the very beginning: in the inception of Article 9, the sale of the Institutions in Phoenix and Tucson, the establishment of the Trust Fund (funds from the property sales), and participated in so many other committees and groups which promote the well-being of DDD Members. Karen knew the history. Karen knew the answers. Karen knew why things were supposed to be “that” way. Karen traveled all over the country, attending seminars and conferences, learning everything there was to learn, and then brought it back to Arizona for us to adopt and implement.

While we are doing our best to carry on in the legacy Karen left us, it will never be the same. District Central IOC, as well as the entire state of Arizona, lost a true friend to us all when she passed away.

We have tried to pick up the pieces, regroup, and carry on, and while we are doing our best, she will be forever missed, and always in our hearts.” Linda S. Mecham

Thank you for taking the time to read through our Annual Report. Please do not hesitate to contact us if you have any questions, concerns, thoughts, or insights that could help us (District Central IOC) as we continually work to promote the protections, welfare, and opportunities for the Individuals served by the Division of Developmentally Disabilities.

Respectfully Submitted,

**Linda S. Mecham**

Linda S. Mecham

DDD District Central Independent Oversight Committee Chairperson

Addendums to our Annual Report

Article 9

Abuse and Neglect

## ADDENDUM #1: ARTICLE 9

Keep this in mind as you read:

RED = original and omitted

Black = original and retained

Black underlined = new

Blue = IOC Comments/Conclusions

### NOTICE OF PROPOSED RULEMAKING TITLE 6. ECONOMIC SECURITY CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY DEVELOPMENT DISABILITIES

#### PREAMBLE

**1. Article, Part or Section Affected (as applicable)      Rulemaking Action**

Article 9	Amend
R6-6-901	ReNUMBER
R6-6-901	New Section
R6-6-902	ReNUMBER
R6-6-902	Amend
R6-6-903	ReNUMBER
R6-6-903	Amend
R6-6-904	ReNUMBER
R6-6-904	New Section
R6-6-905	ReNUMBER
R6-6-905	Amend
R6-6-906	ReNUMBER
R6-6-906	Amend
R6-6-907	ReNUMBER
R6-6-907	Amend
R6-6-908	Repeal
R6-6-908	ReNUMBER
R6-6-908	Amend
R6-6-909	Repeal
R6-6-909	ReNUMBER
R6-6-909	Amend
R6-6-910	ReNUMBER
R6-6-910	Amend

**2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing Statute: A.R.S. 41-1954 (A) (3) and 36-554(C) (6)

Implementing statute: A.R.S. 36-552, 36-554, and 41-1954 (A) (1) (h)

**3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 27 A.A.R. 619, April 23, 2021 (*in this issue*)

**4. The agency's contact person who can answer questions about the rulemaking:**

Name: Christian Eide

Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005  
or  
Department of Economic Security  
1717 W. Jefferson, Mail Drop 1292  
Phoenix, AZ 85007

Telephone: (480) 340-8303

Fax: (602) 542-6000

E-mail: [ceide@azdes.gov](mailto:ceide@azdes.gov)

**5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Article 9 contains rules on Applicability, Prohibitions, ISPP Team Responsibilities, Program Review Committee (PRC), Monitoring Behavior Treatment Plans, Training, Sanctions, Emergency Measures, and Behavior Modifying Medications. The purpose of the rulemaking is to add, amend, and repeal rules to conform to current practice and terminology, and to make the rules more clear, concise, and understandable. The Department last amended this Article in 1994. A Five-Year Review Report on Chapter 6 was approved by the Governor's Regulatory Review Council on December 1, 2015.

#5 Justification to amend or repeal a rule—Make the rule more “concise, clear and understandable—The revision only complicates the language

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

The Department did not review or rely on any study relevant to the rules.

#6 Reference to a study relevant to the rule—Department answer—The Department did not review or rely on any study relevant to the rules.

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

Not applicable.

#7 Showing of good cause—DD says not applicable.

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

The economic impact of the rulemaking is expected to be minimal (less than \$1,000) for all persons involved in the rulemaking and the application process. The persons directly impacted by this rulemaking are individuals who are applicants to the Division of Developmental Disabilities (Division) who voluntarily seek services through the Division. The rulemaking does not impose any obligation on the individual or applicant to accept or participate in services without informed consent. Consumers who apply to the Division will benefit from clear and updated requirements and processes. There are no negative impacts on small businesses as a result of this rulemaking. The Department and members of the public will benefit from the revision of Article 9 because the proposed rulemaking will make the provisions for member's behavior management more clear, concise, and understandable.

#8 Consumer impact—makes management of member's behavior management more "clear, concise, and understandable".

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

Name: Christian Eide

Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005  
or  
Department of Economic Security  
1717 W. Jefferson, Mail Drop 1292  
Phoenix, AZ 85007

Telephone: (480) 340-8303  
Fax: (602) 542-6000  
E-mail: [ceide@azdes.gov](mailto:ceide@azdes.gov)

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

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

No other matters are prescribed.

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

This rule does not require a permit.

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

Not Applicable.

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

No analysis was submitted.

#11. b. No federal law is applicable???

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

None

13. **The full text of the rules follows:**

## **ARTICLE 9. MANAGING INAPPROPRIATE INTERVENTIONS FOR UNSAFE AND INAPPROPRIATE BEHAVIORS**

### Section

<u>R6-6-901</u>	<u>Definitions and Location of Definitions</u>
<del>R6-6-901</del> <u>R6-6-902</u>	<u>Applicability</u>
<del>R6-6-902</del> <u>R6-6-903</u>	<u>Prohibitions</u>
<u>R6-6-904</u>	<u>Restricted Techniques</u>
<del>R6-6-904</del> <u>R6-6-905</u>	<u>ISPP Planning Team Responsibilities</u>
<del>R6-6-903</del> <u>R6-6-906</u>	<u>Program Review Committee (PRC)</u>
<del>R6-6-905</del> <u>R6-6-907</u>	<u>Monitoring Implementing Behavior Treatment Plans</u>
<u>R6-6-908</u>	<u>Emergency Measures Repealed</u>
<del>R6-6-906</del> <u>R6-6-908</u>	<u>Training</u>
<del>R6-6-909</del>	<u>Behavior Modifying Medications Repealed</u>
<del>R6-6-907</del> <u>R6-6-909</u>	<u>Sanctions</u>
<u>R6-6-910</u>	<u>Renumbered Physical Interventions for Emergency Safety Situations</u>

## **ARTICLE 9. MANAGING INAPPROPRIATE INTERVENTIONS FOR UNSAFE AND INAPPROPRIATE BEHAVIORS**

### **R6-6-901 Definitions and Locations of Definitions**

- A.** Location of definitions. The following definitions applicable to the Article are found in the following Section or statute:

<u>"Abuse:"</u>	<u>R6-6-901(B)</u>
<u>"Adult Behavioral Health Therapeutic Home"</u>	<u>A.R.S 36-401</u>
<u>"Article 9 Instructor"</u>	<u>R6-6-901(B)</u>
<u>"Aversive Stimulus"</u>	<u>R6-6-901(B)</u>
<u>"Behavior Plan"</u>	<u>R6-6-901(B)</u>
<u>"Behavioral Health Professional"</u>	<u>R6-6-901(B)</u>
<u>"Behavioral Health Respite Home"</u>	<u>R9-10-101</u>

"Behavioral Health Respite Homes" do not exist in DD services

<u>"Behavioral Health Therapeutic Home"</u>	<u>R6-6-901(B)</u>
<u>"Business Day"</u>	<u>R6-6-901(B)</u>
<u>"Case Manager"</u>	<u>A.R.S 36-551</u>
<u>"Chemical Restraint"</u>	<u>R6-6-901(B)</u>
<u>"Developmental Disability"</u>	<u>A.R.S. 36-551</u>
<u>"Direct Care Worker"</u>	<u>R6-6-901(B)</u>
<u>"Division"</u>	<u>A.R.S. 36-551</u>
<u>"Emergency Safety Situation"</u>	<u>R6-6-901(B)</u>
<u>"Escape Extinction"</u>	<u>R6-6-901(B)</u>
<u>"Habilitation"</u>	<u>A.R.S. 36-551</u>
<u>"Independent Oversight Committee" or "IOC"</u>	<u>R6-6-901(B)</u>

<u>"Intermediate Care Facility for Individuals with Intellectual Disabilities"</u>	<u>A.R.S. 36-551</u>
<u>"Least Intrusive"</u>	<u>R6-6-101</u>
<u>"Managing Employee"</u>	<u>R6-6-901(B)</u>
<u>"Mechanical Restraint"</u>	<u>R6-6-101</u>
<u>"Member"</u>	<u>R6-6-901(B)</u>
<u>"Neglect"</u>	<u>A.R.S. 36-569</u>
<u>"Nursing Care Institution"</u>	<u>A.R.S. 36-401</u>
<u>"Overcorrection"</u>	<u>R6-6-901(B)</u>
<u>"Physical Intervention"</u>	<u>R6-6-901(B)</u>
<u>"Planning Document"</u>	<u>R6-6-901(B)</u>
<u>"Planning Team"</u>	<u>R6-6-901(B)</u>
<u>"Program Review Committee" or "PRC"</u>	<u>R6-6-101</u>
<u>"Psychotropic Medication"</u>	<u>R6-6-901(B)</u>
<u>"Quality Management Professional"</u>	<u>R6-6-901(B)</u>
<u>"Response Cost"</u>	<u>R6-6-101</u>
<u>"Responsible Person"</u>	<u>A.R.S. 36-551</u>
<u>"Seclusion"</u>	<u>R6-6-901(B)</u>
<u>"Service Provider"</u>	<u>R6-6-901(B)</u>
<u>"Support Coordinator"</u>	<u>R6-6-901(B)</u>
<u>"Unsafe Behavior"</u>	<u>R6-6-901(B)</u>

**B. The following definitions apply to this Article:**

1. "Abuse" means the same as "abusive treatment" under A.R.S. § 36-569.
2. "Article 9 Instructor" means an individual approved by the Division to conduct training as outlined in R6-6-908.
3. "Aversive Stimulus" means the presentation of an unpleasant stimulus with the intent to induce changes in behavior.
4. "Behavior Plan" means an integrated, individualized, written treatment plan, based on a Behavioral Health Professional's provisional or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of a Member, that includes:
  - a. One or more treatment goals;
  - b. One or more treatment methods;
  - c. The date when the Member's Behavior Plan will be reviewed;
  - d. The dated signature of the Member or the Member's legal representative; and
  - e. The dated signature of the Behavioral Health Professional.

[Will all behavior treatment plans need to be authored by a BHP, as defined in R6-6-901](#)

[Will all behavior treatment plans require an assessment of behavior?](#)

[Not all BHPs are permitted to diagnosis \(e.g., behavior analyst\)](#)

**5. "Behavioral Health Professional means:**

- a. A. An Individual licensed under A.R.S Title 32, Chapter 33, whose scope of practice allows the individual to:

- i. Independently engage in the practice of behavioral health as defined in A.R.S. 32-3251, or
- ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R. S. 32-3251 under direct supervision as defined in A.A.C. R4-6-101;
- b. A psychiatrist, as defined in A.R.S. 36-501;
- c. A psychologist, as defined in A.R.S. 32-3061;
- d. A physician, as defined in A.R.S. 32-1401;
- e. A registered nurse practitioner licensed as an adult psychiatric and mental health nurse;
- f. A behavior analyst, as defined in A.R.S. 32-2091
- g. A registered nurse with:
  - i. A psychiatric-mental health nursing certification, or
  - ii. One year of experience providing behavioral health services.

“Behavioral Professional” means; a through g None of the “professionals” indicates a knowledge of developmental disabilities.

This will be an access to care issue. Please refer to the number of Qualified Vendors that were approved to provide Habilitation Consultation services to get an estimate on how many Qualified Vendors were conducting assessments and writing plans when the program was funded by DDD. I would also suggest meeting with the health plans to identify how many vendors offer services to adults with an intellectual/developmental disability (I/DD) to determine their capacity. Looking at the number of current behavior treatment plans required for all districts and dividing that by the number of qualified vendor personnel that meet the behavior health professional credentials and that work with people with an I/DD will provide an estimate on if R6-6-901 (B) (4) is realistic.

6. “Behavioral Health Therapeutic Home” means a residence that provides room and board, assists in acquiring daily living skills, coordinates transportation to scheduled appointments, monitors behaviors, assists in the self-administration of medication, and provides feedback to a Support coordinator related to behavioral health services under the clinical oversight of a Behavioral Health Professional.

“Behavioral Health Therapeutic Home” does not exist as a DD option  
Will group homes under the Division become Behavioral Health Therapeutic Homes now?

7. “Business Day” means 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays listed in A.R.S. 1-301.

8. “Chemical Restraint” means medication administered as a method of restricting a Member’s freedom of movement, physical activity, or access to the Member’s own body that is not routine treatment for a Member’s medical or behavioral health condition.

Chemical Restraint—does not prohibit this. This is definitely prohibited in Article 9.

9. “Direct Care Worker” means a person who is employed or contracted to provide primary personal care, guidance, or supervision to a Member in the Service Provider’s care.
10. “Emergency Safety Situation” means unanticipated Unsafe Behavior.
11. “Escape Extinction” means the discontinuation of negative reinforcement for a behavior.
12. “Inappropriate Behavior” means a Member’s actions which a Behavioral Health Professional, Service Provider, or Planning Team reasonably believes to be impeding an individual’s ability to optimally function in society.
13. “IOC” means an Independent Oversight Committee, established under A.R.S. 41-3801.
14. “Managing Employee” means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of a Service Provider.
15. “Member” means the same as “Client: as defined in A.R.S 36.551.
16. “Overcorrection” means, for the purpose of the Article, a group of procedures designed to reduce Inappropriate Behavior, such as:
  - a. Requiring a Member to improve the environment to a state better than existed prior to the occurrence of the Inappropriate Behavior; or
  - b. Requiring a Member to repeatedly practice a behavior by engage in effortful behavior directly or logically related to repairing damage caused by the Member’s behavior as a tactic to evoke behavioral change.
17. “Physical Intervention” means a technique used on an emergency basis by an individual who is providing care or service to a Member to restrict the movement of the Member by direct physical contact to prevent the Member from seriously harming self or others.
18. “Planning Document” means a written statement of services that is separate from the Behavioral Plan and shall be provided to a Member, including Habilitation goals and objectives, that is developed following an initial eligibility determination and revised after periodic reevaluations.
19. “Planning Team” means a group of people including:
  - a. The Member;
  - b. A Responsible Person
  - c. The Support Coordinator;

- d. Other State of Arizona Department of Economic Security staff, as necessary; and
- e. Any Service Provider selected by the Member, Responsible Person, or the Department.

The member should be able to invite anyone they want to join their planning team. The only mention of whom a member can invite is a service provider. What if they want their pastor or a non-DDD funded employer, family friend, etc.

- 20. “Psychotropic Medication” means behavior-modifying medication that affects a Member’s mental status, behavior, or perception.
- 21. “Quality Management Professional” means an individual charged with the evaluation and assessment of Member care and services to ensure adherence to standards of care and appropriateness of services.
- 22. “Seclusion” means, for the purpose of the Article, restricting a Member to a room or area, through the use of locked doors or any other device or method that precludes the Member from freely exiting the room or area, or that a reasonably prudent person would believe precludes the Member from freely exiting the room or area. In the case of a community residence, restricting a Member to the residential site, according to specific provisions of a Planning Document, physician’s orders, or court order, does not constitute Seclusion.
- 23. “Service Provider” means any individual or entity as defined in A.R.S. 36-551 as well as Division staff who administer direct services to Members.
- 24. “Support Coordinator” means the same as “Case Manager” as defined in A.R.S. 36-551.
- 25. “Unsafe Behavior” means a Member’s action or activity, whether intentional, unintentional, or negligent that causes a risk of imminent harm to the Member or others.

### **R6-6-901 R6-6-902. Applicability**

These rules apply to:

- 1. All programs operated, licensed, certified, supervised or financially supported by the Division.
- 2. All habilitation programs as defined in A.R.S. § 36-551(18), as well as all interventions included in this Article, shall be addressed in the client's ISPP.

- A. This Article applies to all programs operated, licensed certified, supervised, or financially supported by the Division in accordance with A.R.S. 36-552, 39-2939, or 36-2940, and includes all Behavior Plans implemented or monitored by a Service Provider in accordance with this Article.

Will behavioral health providers that are funded through Mercy Care or UHC be responsible for following Article 9 if they are conducting a functional behavior assessment (FBA) or a functional analysis (FA) in the members home? If so, how is that going to be communicated to them?

- B. For services provided in healthcare institutions as listed in R9-10-102(A), this Article only applies to the following:
1. Intermediate Care Facilities for Individuals with Intellectual Disabilities;
  2. Nursing Care Institutions;
  3. Adult Behavioral Health Therapeutic Homes; and
  4. Behavioral Health Respite Homes,
  - 5.
- C. For behavioral health services authorized in accordance with A.R.S. 36-2939(A)(2), this Article only applies to:
1. Behavioral Health Therapeutic Homes; and
  2. Behavioral Health Respite Homes.
- D. This Article does not apply to:
1. Health and medical services authorized under A.R.S. 36-2939(A)(5); or
  2. Dental services authorized under A.R.S. 36-2939(A)(6).

### **R6-6-902. R6-6-903. Prohibitions**

- A. **The following behavioral intervention techniques are prohibited:**
1. **The use of seclusion (locked time-out rooms).**
  2. **The use of overcorrection.**
  3. **The application of noxious stimuli.**
  4. **Physical restraints, including mechanical restraints, when used as a negative consequence to a behavior.**
- B. **The use of behavior modifying medications is prohibited, except as specified in R6-6-909, if:**
1. **They are administered on an "as needed" or "PRN" basis; or**
  2. **They are in dosages which interfere with the client's daily living activities; or**
  3. **They are used in the absence of a behavior treatment plan.**
- C. **No person shall implement a behavior treatment plan which:**
1. **Is not included as a part of the ISPP; and**
  2. **Falls under R6-6-903(A), without approval of the PRC.**

#### A Service Provider shall not:

1. Abuse or Neglect a member.
  2. Use a restricted technique under R6-6-904 with a Member as a negative consequence, or
  3. Use Psychotropic Medication as a Chemical Restraint.
- service providers shall not use psychotropic medicines as chemical restrain.  
How will this be enforced?  
A, B,C ABOVE: all eliminated. Reinstate**

### **R6-6-904. Restricted Techniques**

- A. The PRC is prohibited from approving Behavior Plans that include the use of restricted techniques that meet any of the following criteria:
1. Overcorrection as a form of punishment;

2. Seclusion in a room, whether locked or where egress is prevented;
  3. Aversive Stimuli as a punishment;
  4. Physical Intervention, including Mechanical Restraints, as a punishment; or
  5. Techniques that in intent or execution violate a Member's rights as specified in A.R.S. 35-551.01 or other applicable laws, cause physical or psychological pain or harm to a member, or are used as a form of punishment.
- B. A Service Provider may only see the following techniques when the techniques are included in a Behavior Plan approved by the PRC and in the manner specified in the approved Behavior Plan:
1. Escape Extinction;  
escape extinction should never be allowed.
  2. Response Cost;  
mentions response cost, but is not defined in the definition list.
  3. Physical Intervention, including Mechanical Restraints;
  4. Administration of Psychotropic Medication for the purposes of behavior modification unless an exception is granted by the Division; or  
administration of psychotropic medicines for the purpose of behavior modification which seems to be a chemical restraint that is prohibited.
  5. Other techniques identified by the Division or the Planning Team as having the potential to:
    - a. Infringe on a Member's legally mandated rights,
    - b. Cause either physical or psychological pain or harm, or
    - c. Be used as a form of punishment.

Who at DDD would be responsible for approving the use of a psychotropic medication as a PRN? How would the approval or denial be communicated to the Qualified Vendor?

Restricted Techniques, 1 through 5, Remove

Revised R6-6-904. is of concern because with approval from PRC, restricted techniques can now be approved in a Behavior Plan. Those techniques include; Escape extinction, response cost, physical intervention including mechanical restraints and other techniques having the potential to infringe on members rights and protection from harm. The new revision changes the rule on PRN psychotropic medication granting an exception from the Division

#### **R6-6-904. R6-6-905 ISPP Planning Team Responsibilities**

Upon receipt of the PRC's response and as part of its development of the client's ISPP, the ISPP team shall either:

1. Implement the approved behavior treatment plan; or

2. Accept the PRC recommendation and incorporate the revised behavior treatment plan into the ISPP; or
3. Reject the recommendation in whole or in part and develop a new behavior treatment plan to be resubmitted to the PRC and Human Rights Committee.

The Planning Team shall:

1. Participate in the development of a Behavior Plan to modify a Member's Unsafe Behaviors or Inappropriate Behaviors to improve the Member's quality of life.
2. Submit all new or revised Behavior Plans to the PRC for approval.
3. Comply with the determination of the PRC or reject the PRC recommendations and participate in redeveloping the Behavior Plan for resubmission to the PRC.

**R-6-6-905** does not mention including the planning document nor the IR that occurred since the last PRC approved in the BTP. this would help IOC to see if a violation of member's rights and the IR to see if a trend due to the previous BTP alternative behavior/target behaviors.

**Section R6-6-903. R6-6-906 - Program Review Committee (PRC)**

A. The ISPP team shall submit to the PRC and Human Rights Committee any behavior treatment plan which includes:

1. Techniques that require the use of force.
2. Programs involving the use of response cost.
3. Programs which might infringe upon the rights of the client pursuant to applicable federal and state laws, including A.R.S. § 36-551.01.
4. The use of behavior-modifying medications.
5. Protective devices used to prevent a client from sustaining injury as a result of the client's self-injurious behavior.

B. The PRC shall be responsible for approving or disapproving plans specified in subsection (A) above and any other matters referred by an ISPP team member.

C. The PRC shall review and respond in writing within ten working days of receipt of a behavior treatment plan from the ISPP team, either approving or disapproving the plan. The response shall be signed and dated by each member present and shall be transmitted to the ISPP team with a copy to the chairperson of the Human Rights Committee for review and recommendations at its next regularly scheduled meeting pursuant to R6-6-1701 et seq. The response shall include:

1. A statement of agreement that the interventions approved are the least intrusive and present the least restrictive alternative.
2. Any special considerations or concerns including any specific monitoring instructions.
3. Any recommendations for change, including an explanation of the recommendations.

D. Each PRC shall issue written reports, as prescribed by the Division, summarizing its activities, findings and recommendations while maintaining client confidentiality.

1. On a monthly basis, report to a designated Division representative, with a copy to the chairperson of the Human Rights Committee.

2. On an annual basis, by December 31 of each calendar year, report to the Assistant Director of the Division of Developmental Disabilities, with a copy to the Developmental Disabilities Advisory Council.

E. The PRC shall be composed of, but not be limited to, the following persons designated by the District Program Manager:

1. The District Program Manager or his designee, who shall act as a chairperson.
2. A person directly providing habilitation services to clients.
3. A person qualified, as determined by the Division, in the use of behavior management techniques, such as a psychologist or psychiatrist.
4. A parent of an individual with a developmental disability but not the parent of the individual whose program is being reviewed.
5. A person with no ownership in a facility and who is not involved with providing services to individuals with developmental disabilities.
6. An individual with a developmental disability when appropriate.

A. The PRC shall include the following persons designated by the Division:

1. A Division employee who shall act as the PRC chairperson and who is a non-voting member of the PRC;

The PRC is not a voting member but should be a voting member as usually the person most trained by DDD.

2. A person qualified in the use of behavior management techniques, such as a Behavioral Health Professional;
3. A member of the IOC;

IOC is mentioned as required attendance, but IOC are volunteers and don't always have the free time, especially if they work or have a child/adult with IDD. Maybe mileage or a stipend would incentivize attending since reading and attending PRC is over the 10 hrs. AOA suggests for IOC volunteers.

Article 9 now requires an IOC member to be on the PRC committee. IOC members are volunteers. How will the district cope with the fact that we don't have enough IOC members to volunteer their time for PRC meetings?

4. A Quality Management Professional; and

What are the qualifications for someone to be considered a quality management professional? Per the definition located in R6-6-901 (B) (21) there are no specific certifications or training required.

5. A community member from at least one of the following categories:

- a. A parent of an individual with a Developmental Disability who is not the parent of the Member being reviewed;

- b. A person with no other personal or professional relationship with the Division;

or

- c. An individual with a Developmental Disability.

Is the community member a mandatory attendance and how will DDD know if they are qualified to read the BTP and review it at the PRC meeting.

B. The PRC shall meet to review and approve or deny all submitted Behavior Plans.

C. The PRC chairperson shall send the PRC's written determination to the Planning Team within five Business Days of the meeting described in R6-6-906(B).

1. PRC approval of a Behavior Plan shall include:

- a. A statement of agreement that the interventions approved are the Least Intrusive least restrictive interventions, and that the interventions are in compliance with R6-6-904.
  - b. Any special considerations or concerns including specific monitoring instructions; and
  - c. Any formatting or PRC procedural or documentation changes in the Behavior Plan that need to be made and resubmitted to the PRC before the Behavior Plan is considered fully approved.
2. PRC denial of a Behavior Plan shall include:
- a. The reason for denial;
  - b. Recommendations for changes to the Behavior Plan; and
  - c. An explanation of the recommendations.

F. A PRC shall be separate from but a complement to the ISPP team, and the Human Rights Committee established pursuant to R6-6-1701 et seq.

### **R-6-906**

In the former R-6-903 (A) (4) a behavior treatment plan was needed for anyone that lived in a DDD funded residential placement that took behavior modifying medications. With the deletion of this requirement, are members no longer required to have a behavior treatment plan just because they live in a DDD funded residential program and take behavior modifying medications? If so, how is it determined if a plan is needed or not, who makes that decision, what is the criteria, how often is the topic revisited? Provider Representatives are no longer a part of the Program Review Committee. It is important to have provider representatives included since they are the ones that work with the members daily therefore, they have a good idea of what would work or not work with a member, if a staff would be able to understand the plan and they provide suggestions based off their experiences working with members with the same target behaviors.

### **Section R6-6-905. - Monitoring Behavior Treatment Plans R6-6-907 Implementing Behavior Plans**

Each ISPP team shall specifically designate and record in the ISPP the name of a member of the team, excluding those direct service staff responsible for implementing the approved behavior treatment plan, who shall:

- A. After a Behavior Plan is approved by the PRC, the Division shall identify all Service Providers subject to the Behavior Plan and provide a copy of the approved Behavior Plan to those Service Providers.
- B. A Service Provider identified in R-6-6-907(A) shall:
  1. Ensure that the **behavior treatment plan** Behavior Plan is implemented as approved by the PRC.
  2. Ensure that all **persons** individuals implementing the **behavior treatment plan** Behavior Plan have received **appropriate** training as specified in **R6-6-906** **R6-6-908** and as appropriate for the Member's Behavior Plan;
  3. Maintain training records of all individuals specified in R6-6-907(B)(2);

**3-4** Ensure that objective, and accurate data are maintained in the client's record;

**4-5** Evaluate, at least monthly, collected data and other relevant information as a measure of the effectiveness of the **behavior treatment plan** Behavior Plan; and

5-6 Conduct on-site observations of the implementation of the Behavior Plan **not less than** at least twice per month and prepare, sign, and place in the **client's Member's record** a report of all observations.

Are the “at least two times per month” observations per member or per location that the member’s plan is implemented in? (e.g., two times in the DTA and two times in the group home)

A Behavior Plan no longer requires documentation that the guardian or the individual has signed “informed consent” for psychotic medication.

Who is funding and training the service providers for the BTP that they have to train their staff to implement?

Nowhere does the rule mention that the person writing the BTP knows the individual for whom the BTP is written nor that the writer attends the planning team where the team agrees to the BTP.

### **Section R6-6-906. R6-6-908 – Training**

A. Any person who is involved in the use of a behavior treatment plan shall be trained by the Division or trained by an instructor approved by the Division prior to such involvement.

B. Initial training shall cover at a minimum:

1. Provisions of law related to:

a. Interventions; particularly this Article and 42 CFR 483.450 October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;

b. Legally mandated rights of individuals with developmental disabilities; particularly A.R.S. §§ 36-551.01, 36-561 and 42 CFR 483.420 (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;

c. Confidentiality; particularly A.R.S. §§ 41-1959 and 36-586.01 and 42 CFR 483.410(c)(2) (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State.

d. Abuse and neglect prohibitions pursuant to A.R.S. § 36-569.

2. Intervention techniques, treatment and services, particularly addressing the risks and side effects that may adversely affect clients.

especially important to include,  
excludes testing for tardive dyskinesia

3. A general orientation to:

a. Division goals with respect to the provision of services to people with developmental disabilities.

b. Related policies and instructions of the Division.

C. With respect to the use of interventions, training shall include hands-on or practical experience to be conducted by instructors approved by the Division, using a curriculum approved by the Division, and who have experience in the actual use of interventions as opposed to administrative responsibility for such use.

D. In addition to initial training, the Division shall ensure that refresher training is available as necessary to maintain currency in knowledge and recent technical trends related to intervention for the management of inappropriate behavior.

E. Physical management techniques shall only be used by those persons specifically trained in their use.

F. The following records and documents related to training shall be maintained by the Division for five years and be available for public inspection.

1. A summary of the training plan adopted by the Division in compliance with this Section, including schedules, instructors, topics, and expressed parameters of the hands-on or practical experience component of the training.
2. Required special knowledge, skills, training, education or experience of the instructors related to managing inappropriate behaviors.
3. A list of persons satisfactorily completing initial and refresher courses and course dates.

G. The Division shall review the training plan at least every two years for compliance with all applicable provisions of law and Division policy as well as for the protection of clients.

#### Reinstate DDD training,

- A. A Service Provider shall ensure Managing Employees, Direct Care Workers, and supervisors of Direct Care Workers successfully complete Article 9 Training.
- B. All training under this Article shall be taught by an Article 9 Instructor using the curriculum and method approved by the Division.
- C. Article 9 training shall include:
  1. The requirements, restrictions, and purpose of this Article;
  2. Interventions, including those described in this Article;
  3. Legally mandated Members' rights;
  4. Confidentiality requirements; and
  5. Division policies and procedures relating to this Article.
- D. Article 9 training shall be completed:
  1. For initial training, within 90 calendar days of hire or before working directly with Members without supervision from someone with a current certification in Article9, whichever is earlier; and
  2. For recertification as directed by the Division.

#### **Section R6-6-907 –Section R6-6-909 - Sanctions**

For programs operated, licensed, certified, supervised or financially supported by the Division, failure to comply with any part of this Article may be grounds for suspension or

revocation of a license, for termination of contract, employment, or for any other applicable administrative or judicial remedy.

The Division may impose sanctions for failure to comply with any part of this Article, including:

1. Suspension or revocation of a license or certification;
2. Termination of a contract;
3. Termination of individuals directly employed by the State of Arizona;
4. Prohibition against contact with Members; and
5. Any other administrative, contractual, or judicial remedies.

#### Old Sanctions—Reinstate

#### **Section R6-6-908 - Emergency Measures REPEALED**

A. Physical management techniques employed in an emergency to manage a sudden, intense, or out-of-control behavior shall:

1. Use the least amount of intervention necessary to safely physically manage an individual.
2. Be used only when less restrictive methods were unsuccessful or are inappropriate.
3. Be used only when necessary to prevent the individual from harming self or others or causing severe damage to property.
4. Be used concurrently with the uncontrolled behavior.
5. Be continued for the least amount of time necessary to bring the individual's behavior under control.
6. Be appropriate to the situation to ensure safety.

B. When an emergency measure, including the use of behavior modifying medications pursuant to R6-6-909(D), is employed to manage a sudden, intense, out-of-control behavior, the person employing that measure shall:

1. Immediately report the circumstances of the emergency measure to the person designated by the Division and to the responsible person.
2. Provide, within one working day, a complete written report of the circumstances of the emergency measure to the responsible person, the case manager, the chairperson of the Program Review Committee, and the Human Rights Committee.
3. Request that the case managers reconvene the ISPP team to determine the need for a new or revised behavior treatment plan when any emergency measure is used two or more times in a 30-day period or with any identifiable pattern.

C. Upon receipt of a written report as specified in subsection (B)(2) above, the PRC shall:

1. Review, evaluate and track reports of emergency measures taken; and
2. Report, to a person designated by the Division, instances of possible excessive or inappropriate use of emergency measures on a case-by-case basis for corrective action.

#### Emergency Measures need to be reinstated

#### **Section R6-6-909 - Behavior-modifying Medications REPEALED**

A. The Division shall make available the services of a consulting psychiatrist who shall review cases and provide recommendations to prescribing physicians to ensure that the

medication prescribed is the most appropriate in type and dosage to meet the client's needs.

B. Behavior-modifying medications shall be prescribed and administered only:

1. When, in the opinion of a licensed physician, they will be effective in producing an increase in appropriate behaviors; and it can be justified that the harmful effects of the behavior clearly outweigh the potential negative effects of the behavior modifying medication.
2. As part of a behavior treatment plan in the ISPP.
3. With the informed consent of the responsible person.

C. The Division shall provide the following monitoring, in addition to that specified in R6-6-905, for all behavior treatment plans that include the use of a behavior-modifying medication:

1. Ensure that collected data relative to the client's response to the medication is evaluated, at least quarterly, at a medication review by the physician and the member of the ISPP team designated pursuant to R6-6-905 and other members of the ISPP team as needed.
2. Ensure that each client receiving a behavior-modifying medication is screened for side effects, and Tardive Dyskinesia as needed, and that the results of such screening are:
  - a. Documented in the client's case record;
  - b. Provided immediately to the physician, responsible person, and ISPP team for appropriate action if the screening results are positive; and
  - c. Provided to the Program Review Committee and the Human Rights Committee within 15 working days for review of screening results that are positive.

D. In the event of an emergency, a physician's order for a behavior modifying medication may, if appropriate, be requested for a specific one-time emergency use. The person administering the medication shall immediately report it pursuant to R6-6-908(B).

E. The responsible person shall immediately be notified of any changes in medication type or dosage.

Reinstate Behavioral modifying medications R6-5-909.

B.3 Removes informed consent. Where is informed consent for the psychotropic medicines and BTP in the Rule?

C. Data is not collected, medication is not evaluated quarterly ,

C.2 Screening for Tardive Dyskinesia is eliminated.

These would all be against the person's rights and is important to retain.

- A. In the event of an Emergency Safety Situation that is not covered by the Member's Behavior Plan, a Service Provider, its employees, or its agents may apply Physical Interventions in accordance with R6-6-910(B) to ensure the safety of the Member or others.
- B. Physical Interventions used during an Emergency Safety Situation shall be:
  - 1. The least amount of intervention necessary to safely manage an Emergency Safety Situation;
  - 2. Used only when less restrictive methods are unsuccessful or are inappropriate;
  - 3. Used only when necessary to prevent the Member from harming self or others;
  - 4. Implemented during the Emergency Safety Situation for the least amount of time necessary; and
  - 5. Performed only by individuals trained in the implementation of Division-approved intervention techniques.
- C. The Planning Team shall reevaluate a Behavior Plan when Physical Intervention is used in response to an Emergency Safety Situation two or more times in a period of 30 calendar days or with any identifiable pattern.

Use of Emergency measures does not mention using for behavior and the need to stop the emergency measure when the behavior stops.

### CONCLUDING THOUGHTS

When Article 9 was developed, literally the whole state was represented by DD staff and families. It has stood the test of time since 1994. According to page 604, #5, the reason the rule should be amended is to make it clear, concise, and understandable. (This has never been a problem). #6 shows that the State did not review or rely on any study relevant to the rule. #7 says a "showing of good cause as to why the rulemaking is necessary" is not applicable. #11 does not indicate that any federal law is applicable to the changes.

PRC has left out a provider of DD services on the committee, The Chair is not allowed to vote and perhaps, most important is that each committee is to have a behavioral professional. This has not happened in District Central. It does not mention that a Behavior Plan must be accompanied by a Planning Document.

Karen Van Epps, District Central IOC Chair

Quote, "Article 9 has had a significant impact in improving quality of life for many individuals. The sense of community has become the focus as many people, who at one time resided within the confines of an institution, now experience the fulfillment of value as community members. The role of service provider has shifted, from one of controller, to partner in support of individuals".

The new revisions are in conflict with;

ARS 36-55.01 Developmentally disabled persons rights guaranteed

ARS 36-551. Prohibiting certain treatment or drugs; use of aversive stimuli

DD members are much different from behavioral health members and need the protections that the Article 9 provided. It is very important to retain the language of Article 9 as originally written or if changes are made, they should only be made for

clarification. The fear is that the proposed rules may necessitate institutional care for DD members instead of promoting community living as demanded by Medicaid/CMS. Carol McNulty, District Central IOC Vice-Chair

DD members are much different from behavioral health members and need the protections that the Article 9 provided. It is very important to retain the language of Article 9 as originally written or if changes are made, they should only be made for clarification. The fear is that the proposed rules may necessitate institutional care for DD members instead of promoting community living as demanded by Medicaid/CMS.

Who was included in this rewrite process? This current revision seems distinctly slanted toward Behavioral Health, rather than DDD with IOC oversight.

A clear definition of the following is needed to be in place:

What are the violations and what needs to be approved.

Definition of techniques that are required for PRC approval.

Definition of "emergency measure", and when is it to be reported. No reporting measures are included in the new revision. All Emergency measures are removed.

("emergency measures can only be used in concurrent with the behavior"). Replaced with "Least amount of time for least amount of force", but does not define that it must be concurrent with the behavior, which infers there may be an offset, which means member may be restrained longer than the behavior. This needs clarification.

Removed language that states members shall be protected from chemical restraints.

This gives permission for medications to be administered at the whim of someone who just may not want to be bothered with the Member.

Tardive Dyskinesia check has been removed. This is vital to the protection and health of the Member.

Where is Informed Consent?

DDD has been assured that Article 9 training will not change fundamentally, other than specific revisions to the new Article 9, but where are the guarantees for that, if the basis for the current article 9 training is being removed regarding the Member's rights and restrictions.

This new article 9 sets up the perfect model for a medical model/institutions.

What was the purpose of this rewrite? "To make it clear, concise, and understandable." Pg. 604, #5, #6 and #7. It is not clear, concise, and understandable. This language is not easily understood by those who would oversee its implementation.

If only a behavioral health professional is to write the plan, how is the training of the plan going to be translated from the behavioral health professional to the Direct Care Staff who are directly responsible for implementing it with the member? If a BCBA is paid to write the plan, where is the funding and facilitation for training the plan, once it is approved? This is an Access to Care concern. Even if the funding is in place, how accessible is the professional to the planning teams and members?

The revision does not state that the planning team will not be writing the plan, it says they will be *active* in writing the plan. However, they can't write a plan with any of the restricted techniques without the oversight or direct intervention of the behavioral health professional. It is unclear what access or ability a planning team will have to write a

plan. If all plans have to be approved or facilitated by a behavioral health professional, then what plans are left that can be written without one? With this rewrite, we are removing the ability of a planning team to write a plan by themselves.

Historically, Article 9 was all about promoting the potential of our members to interact in the community. This revision of Article 9 as being presented by Behavioral Health has nothing to do with promoting individuality or potential in the community. This initiates a path to going back to an institutional model where we can keep people safe, and if that is accomplished by chemical restraint, then that will be acceptable.

Bottom Line: We are moving away from enforcing rights and moving back towards an institutionalized model to where we can chemical restrain people to ensure their safety. It has nothing to do with their potential or their interaction in the community. This is against the Medicaid model, which is promoting a strong interaction with the community. This is a time warp back to institutionalization.

In closing, traditionally, Article 9 was written to protect vulnerable adults in residential settings, whether they do or do not have a guardian/responsible person, from abuse and neglect. This new rewrite does not accomplish that goal. Is this level of support needed for all members served by DDD? Are these changes really in the best interest of the Members and supporting them to meet their potential in the community as opposed to just keeping them safe in a medical model by chemical restraints, and do they support guidelines from Medicaid? This new rewrite of Article 9 is setting the stage for a behavioral health model: Behavioral health will come into the group home to implement the plan twice a week. Staff will not implement the plan. Thus, the way DDD does services now is going to change. There will not be consistency within the group home, the DTA, the community using the same language and the same techniques. By removing safeguards currently in place, and in rewriting Article 9, the program will be moved into a behavioral health model, which is not the DDD model.

Linda Mecham; Compiled from IOC Meeting held May 24, 2021 @ 10:00 AM

Individuals with intellectual and developmental disabilities (I/DD) should be assured safety and security within the context of dignity of risk, autonomy, and choice. It is essential that we promote each individual's ability to be valued, fully participating members of the community and to engage in meaningful and relevant activities. A 2018 report published by the Council on Quality and Leadership, entitled, "Restraint, Restrictive Interventions, and Seclusion of People with Intellectual and Developmental Disabilities" notes that while hotly contested, there is inconclusive evidence of their effectiveness. In fact, the study notes that their use increases the risk of death, injury, and psychological harm not only for people with disabilities, but for the individuals employed to support them.

Article 9 in Arizona historically, proactively, and positively supported the positive and adaptive behavior of individuals with I/DD. Article 9 has been used as a template for the development of best practice and model policies for supporting individuals with I/DD across the country. One example is the Jensen Settlement Agreement in Minnesota, the result of a lawsuit filed against DHS in 2009 alleging that the former Minnesota

Extended Treatment Options (METO) program used restraint and seclusion in a way that broke the law and violated the rights of people with disabilities. Jensen required person-centered thinking, positive behavioral supports and serving people in the most-integrated setting consistent with the person's goals, dreams, and aspirations. It is therefore, of great concern that the revised Article 9 would seem to allow certain

elements historically prohibited. A review of recent reports from the [DDD Independent Oversight Committee's](#) indicate that there is an overall theme in the response by individuals with I/DD to their behavioral treatment plans: a lack of trained and passionate direct care workers results in individuals with I/DD feeling that they are rushed, disrespected and as a result they engage in behaviors deemed "inappropriate".

### **Restraints, Restrictive Interventions, Response Cost, Seclusion**

We are particularly concerned with the following changes to Article 9, and suggest the following:

*Overcorrection as a form of punishment* -- should be explicitly prohibited without the modifier "as a form of punishment".

*Aversive stimuli as a punishment* -- should be explicitly prohibited without the modifier "as a form of punishment".

*Response Cost* -- should be explicitly prohibited without the modifier "as part of a Behavior Plan approved by the PRC.

*Physical Intervention, including mechanical restraints* -- should be explicitly prohibited without the modifier "as part of a Behavior Plan approved by the PRC.

Psychotropic Medication- should expressly include provisions for informed consent for the initial administration of any psychotropic medication, changes in doses, and screening protocols for side effects. PRN medications for the purpose of behavior management should be prohibited.

Escape Extinction -- should be explicitly prohibited.

### **Behavior Plans**

We concur with prior suggestions from the DDD Independent Oversight Committees: DDD should develop a standard template for Behavior Treatment Plans with participation and input from legal guardians, identify antecedent behaviors and ensure that the individuals developing the plan have familiarity with the individual with I/DD. The proposed rule should require that behavior plans include documentation of proactive techniques to identify triggers, interventions to be utilized before behaviors escalate and skills training to support individuals to improve their self-regulation and/or use alternative and augmentative communication to enable them to communicate when they are stressed, in pain, etc.,

### **PRC Membership**

The revisions to the membership may result in a lack of experience and expertise in supporting individuals with I/DD. While we agree that PRCs should also include representatives with Quality Management and Behavioral Management backgrounds, it is important to maintain inclusion of representatives with experience in providing training and skill development to individuals with I/DD (habilitation providers), and District Program Management staff as voting members.

### **Training**

There appears to be an elimination of the requirement that all individuals within the Division and its qualified vendors complete Article 9 training. This training ensures that everyone, from front line staff to executives are aware of the importance of maintaining the human rights of individuals with I/DD. Further, it does not appear that the

Behavioral Health professionals and Quality Management professionals appointed to the PRCs will be required to complete Article 9 training.

### **Data Collection**

The requirement that within one working day a report must be submitted when emergency measures are utilized has been deleted. Further, the reference that planning teams convene to develop a new behavior treatment plan if one does not already exist has also been deleted and should be added. The Independent Oversight Committees have repeatedly requested a standardized format for reporting incidents across regions and reference to this data collection, tracking, trending, reporting and relevant changes to policies and procedures should also be included in any revision to Article 9.

### **Conclusion**

Integrating acute, behavioral, HCBS and LTSS approaches should continue to support the strengths, choices, autonomy, and integrity to supporting individuals with I/DD. The National Association of State Directors of Developmental Disabilities Services (NASDDDS) affirmed a similar position opposing aversive interventions and promoting positive behavior supports in 2015. Any revisions to Article 9 should affirmatively reject the use of interventions that have the potential to cause pain and harm, whether physical or psychological.

Diedre Freedman, District West IOC Chair

## **ADDENDUM #2: ABUSE AND NEGLECT (CHAPTER 64)**

### **QUESTIONS SUBMITTED TO DDD REGARDING ABUSE AND NEGLECT (CHAPTER 64)**

*From District Central Independent Oversight Committee*

The training material for Instructors and Providers was sent out for Public Comment, and per Chapter 64 of the Policies manual, MAY be used to teach the concepts. The training material/curriculum for Members did not go out for Public Comment, and per Chapter 64 of the Policies Manual, states that the material MUST, not MAY, be used. The training material/Curriculum referred to is found in on the DDD Website under the heading "Abuse and Neglect".

Why did the training material for the Members NOT go out for Public Comment?

Why is the curriculum for the Instructors and Providers different from the curriculum for the Members?

Who will teach the curriculum to the Members in the DTA setting, per Chapter 64, if the Member is dually enrolled in a group home and DTA? Is that instructor qualified to deal with the possible damaging psychological effects this training may have on the Member, based on possible past experiences of abuse or neglect?

If the Member is a visual learner, rather than an auditory learner, could the slides present an impression that is not intended? For example, is biting one's arm acceptable behavior? Is putting one's hand on (especially) the private, personal areas of another's body acceptable behavior? If the member is not able to express what the slides are conveying to him/her, how can the Instructor correct that misconception?

What is the Opt-in/Opt-out process for Members?

If a Responsible Person (IE Guardian) is involved, does that person have prior knowledge from DDD that this curriculum is being taught to the Member for whom they are responsible? What is that process of informing a Responsible Person, since what is being taught to the Member did not go out for Public Comment?

If the Member is responsible for himself, what is the process for him/her to opt in or out without actually viewing the material before it is presented?

With the inclusion of over 100 slides, the time it would take to review the material is too long for most Members. What is the plan to divide this up?

Have you considered that doing this in the DTA setting could provide an atmosphere of exclusion if the Member opts out of this Instruction?

Since this is to be reviewed annually, per chapter 64, does the Opt-in, Opt-out take place every year? Because of the sensitive nature of the curriculum, should that document be included in the Planning Document/Person Centered Plan?

**IOC QUESTIONS; DDD RESPONSES; IOC QUESTIONS TO DDD RESPONSES**

**ABUSE AND NEGLECT (CHAPTER 64)**

Key: **Bold/Black: Original IOC questions:**

## Blue: Responses from DDD

- *Italicized Bullet points: IOC responses to DDD answers*

The training material for Instructors and Providers was sent out for Public Comment, and per Chapter 64 of the Policies manual, MAY be used to teach the concepts. The training material/curriculum for Members did not go out for Public Comment, and

- **per Chapter 64 of the Policies Manual, states that the material MUST, not MAY, be used. The training material/Curriculum referred to is found on the DDD Website under the heading "Abuse and Neglect".** The Division determined that we would help offset costs to deliver abuse prevention training after receiving public feedback about the amount of time and resources that Qualified Vendors would need to expend to implement. For this reason and to ensure that members were offered consistent training, **we** determined that **we** would require one training curriculum for all members. Members are NOT required to take the training.
- *The question had nothing to do with how providers were being paid to train staff. We understand the premise behind consistency in training content but many members will not understand the content the way it is presented in the MUST use material*
- **Why did the training material for the Members NOT go out for Public Comment?**
  - **Response:** The original posting of Chapter 64 had a summary version of the training-although it's not required that DES DDD get Public feedback **for training**. The Division needed to get the source documents from Massachusetts and then update them to align with Arizona laws and rules and to brand the DES logo etc. This occurred after the original posting and took some time. **We** determined that it was in the best interest of the community to make the training available after the formatting was completed. **We** plan to provide a process to gather additional public feedback once vendors have provided the training for a full year.
- *With the importance of this material, more than a summary should have gone out. Why would DDD not want feedback on this? Is it within the law that a summary is adequate for Public Comment, or must it be the document in its entirety? Did anything ever come back from someone with knowledge of law?*
- *Training (Methodology) vs Curriculum (Content): Mincing words: Training on how the curriculum (Chapter 64) does not need Public Comment. The Curriculum (Chapter 64) needs to go out for Public Comment.*
- *NON-RESPONSIVE ANSWER: Why did the material for Members NOT go out for Public Comment?*
- *Cost effectiveness: cheaper to do it this way...Offensive...individual needs are not being met due to cost...???*
- *"WE DETERMINED" THAT IT WAS IN THE BEST INTEREST OF THE COMMUNITY...WHO IS "WE"...SENSITIVE STUFF...NOT OK...WHERE ARE THE COMMUNITY GUIDELINES? SOME KIND OF PUBLIC DETERMINATION.*
- *STEWARDS OF THE MONEY...WHERE WAS PUBLIC INPUT RE THIS VERY DEFINITIVE SEX ED TRAINING?*
- *DID AHCCCS REVIEW THIS?*

- *ABUSE AND NEGLECT COMMITTEE NEVER OK'D THIS ACTION (per two members of that committee)*

• **Why is the curriculum for the Instructors and Providers different from the curriculum for the Members**

- **Response:** This member training was one that was recommended by the Sexual Violence & I/DD Collaborative chaired by the ADDPC. Awareness and Action was developed in Massachusetts (MA) by and for self-advocates.
- <https://disabilityinfo.org/records/awareness-and-action-aa/>
- *Responsible Person/Family Members should be involved in approving curriculum, i.e. the need for Public Comment*
- *There is only 1 DDD Member on the ADDPC committee and he works full time, and does not represent the majority of Members served by DDD. The training is for members that participate in DTAs and live in group homes. The training is not reflective of the member's abilities that participate in the 2 targeted programs/services.*
- *IF A MEMBER LIVES AT HOME, BUT ATTENDS A DTA, IS HE REQUIRED TO TAKE THE MATERIAL?*
- *WHERE IS CULTURAL DIVERSITY SENSITIVITY?*
- *NO PRE-TEACHING*
- *NON-RESPONSIVE ANSWER: Why is the material different for Providers and Members?*

*NO PROBLEM WITH PROVIDER CURRICULUM...THE WAY YOU PROTECT THE MEMBERS IS BY TRAINING THE STAFF: IF THE ADULTS IN THE ROOM ARE TRAINED THEY CAN PROTECT THE MEMBERS THROUGH THIS TRAINING.*

• **Who will teach the curriculum to the Members in the DTA setting, per Chapter 64, if the Member is dually enrolled in a group home and DTA? Is that instructor qualified to deal with the possible damaging psychological effects this training may have on the Member, based on possible past experiences of abuse or neglect?**

- **Response:** Chapter 64 requires the DTA to offer the training and if the member does not attend a DTA, then the Group Home provider offers the training. Members and guardians decide if they want to take the training or not. The vendor determines who does the training but there is a comprehensive instructor guide and a participant guide posted. We understand that not all training is going to be a fit for all individuals.
- *BE A FIT FOR ALL INDIVIDUALS. In the response to the first question the reply was "we determined that we would require one training curriculum for all members." Confusion: If DDD determined, with the support of ONE person from a disability advocacy organization, no matter how little he had in common with those for the whom the training is being provided, why is it appropriate to only offer 1 training instead of meeting the needs of the specific members abilities?*
- *"Not all training is going to be a fit for all individuals."*
- *One size does not fit all in the DDD world. This seems to be an admission that the curriculum needs to be individualized per the member who participates.*

- See Member Bill of Rights, Letter O: "Right to express human sexuality and receive appropriate training;" This is violating the Member Bill of Rights, as this is not appropriate training for all Members.
- NON-RESPONSIVE ANSWER: How will one know if psychological damage is or has been done? Professionals trained in the DDD population and psychiatry need to be involved.
- TRAINING VS CURRICULUM...need to be consistent is whether referring to the Training of the Curriculum or the curriculum itself (the content)
- 18 YEAR OLD (STAFF) TEACHING THE CURRICULUM????? INSTRUCTOR NEEDS TO BE EXPERIENCED IN THE SUBJECT....
- THE MEMBER WILL WANT TO TALK ABOUT THEIR EXPERIENCE, BUT CURRICULUM DOES NOT ALLOW FOR THIS...NEEDS TO BE INDIVIDUALIZED...Who will the Member talk to? Again, is the listener qualified to have that discussion with the Member?
- If the Member is a visual learner, rather than an auditory learner, could the slides present an impression that is not intended? For example, is biting one's arm acceptable behavior? Is putting one's hand on (especially) the private, personal areas of another's body acceptable behavior? If the member is not able to express what the slides are conveying to him/her, how can the Instructor correct that misconception?
  - **Response** Members and guardians decide if they want to take the training or not. We plan to provide a process to gather additional public feedback once vendors have provided the training for a full year.
- Feedback after 1 year is not acceptable: Results in possible traumatization of members for a year then collect the data on the traumatization? The only data being collected at this time is whether the Member took the course or not.
- The Responsible Person/Guardian needs to view the training material before the member participates in it. The only way to view the curriculum is on the website. The website is not user friendly, even for us that know how to access it. Does this mean that the Member is his own guardian that he will have to review the material before determining if it is appropriate for him, in order to participate in the course?
- What does the questionnaire for feedback include? Parents? Vendors? Members?
- From an IOC member's child (who is served by the Division): THE PICTURES DID NOT MAKE ANY SENSE. EXPLANATION NEEDED. NOT GOOD. COLORS: THE PEOPLE IN HER WOULD NOT UNDERSTAND RED IS STOP AND GREEN IS GO...
- WHERE IS THE PRETEACHING? (MEMBER)
- NON-RESPONSIVE ANSWER: Could the slides present an impression that is not intended? For example, is biting one's arm acceptable behavior? Is putting one's hand on (especially) the private, personal areas of another's body acceptable behavior? If the member is not able to express what the slides are conveying to him/her, how can the Instructor correct that misconception?
- What is the Opt-in/Opt-out process for Members?

- **Response:** The vendor offers the training and documents which members it was offered to. Members and guardians decide if they want to take the training or not.
- *There is no required documentation for the member if he opted in or out. Can Providers put the names of all members on an Excel sheet, make a random announcement, and that is sufficient?*
- **If a Responsible Person (IE Guardian) is involved, does that person have prior knowledge from DDD that this curriculum is being taught to the Member for whom they are responsible? DDD: Vague question....**
  - **Response:** Yes. Members and guardians decide if they want to take the training or not.
- *HOW IS DDD INFORMING THE RESPONSIBLE PERSON ABOUT THE TRAINING AND THE CONTENT? This SHOULD BE DONE THROUGH BLASTS, SNAIL MAIL AND BY THE DDD SCS AT EACH ISP MEETING. This is a DDD requirement. DDD should be the responsible for sharing the information with the Responsible Person/Guardian.*
- *There cannot be in "Informed Consent" (per Article 9) without knowing what the curriculum is.*
- *NON-RESPONSIVE ANSWER: How can there be Prior knowledge? Did not go out for Public Comment and yet it is in Policy.*
- **What is that process of informing a Responsible Person, since what is being taught to the Member did not go out for Public Comment?**
  - **Response:** The staff (Recognizing and Reporting Abuse, Neglect and Exploitation of Vulnerable Populations and member (Arizona Awareness & Action - Recognizing, Reporting and Responding to Abuse, Neglect and Exploitation) training curriculum are posted to the DES DDD website.
  - <https://des.az.gov/services/disabilities/developmental-disabilities/vendors-providers/current/training>
- *NON-RESPONSIVE ANSWER: How can there be Prior knowledge? Did not go out for Public Comment and yet it is in Policy.*
- *HOW IS DDD INFORMING THE RESPONSIBLE PERSON ABOUT THE TRAINING AND THE CONTENT? This should be done through NEWSLETTERS, blasts, snail mail, and by the DDD Support Coordinators at each Planning Document/Personal Centered Plan Meeting. This is a DDD requirement. DDD should be responsible for sharing the information with the Responsible Person/Guardian.*
- *MOST OF WHERE I LIVE IS NOT WIRED FOR INTERNET. THIS DOES NOT WORK.*
- *CULTURAL SENSITIVITY AND DIVERSITY.*
- **If the Member is responsible for himself, what is the process for him/her to opt in or out without actually viewing the material before it is presented?**
  - **Response:** Qualified vendors should share information about what the training covers. Members and guardians decide if they want to take the training or not. They do not need to opt out.

- **NON-RESPONSIVE ANSWER:**  
*Since, PER ARTICLE 9, consent is required. In order to obtain written consent, all relevant information would need to be provided, which in this case is the training. In order to get consent from a member who is his own responsible person, PER Art 9, the Member would need to see the training. Circular logic but that is what would need to be done to comply.*
- *Regarding the last sentence, “They do not need to opt”: Would a provider need to really do anything besides provide a list of members to DDD as verification that the class was offered, since they do not need to know who opts out?*
- *There cannot be “Informed Consent” (per Article 9) without knowing/VIEWING what the curriculum is.*
- *DDD should provide a standardized form for Members to opt-in/Opt-out. District Central IOC has seen 4 different permission forms from 4 different Providers. Each is different, each protects the Member and/or the Provider in different ways. One gave very detailed account of content, one merely mentioned the location on the DDD website, with the other two somewhere in between. DDD should be responsible enough to provide protection from all liability for everyone involved, including the Member.*

• **With the inclusion of over 100 slides, the time it would take to review the material is too long for most Members. What is the plan to divide this up?**

- **Response:** *Vendors are to offer and provide this during routine service delivery (for example as part of the structured day programming) so they can offer the training in multiple sessions to fit member needs.*
- *In a normal slide presentation, with discussion, the time allotment is about 1-2 minutes per slide. Knowing the training would need to typically be broken into 30-45 minutes per training, with the possibility of covering one slide every 4-5 minutes, this course could possible take: (session @ ½ hour @ 5 min slide= 6 slides per session = Seventeen 30 minute sessions. Finish up the course, if divided equally, at the end of the year...just in time to begin again. Why must this be taught annually? Is this annual renewal required for the Providers as well?*
- *Trauma from past incidents could result in behaviors and/or chaos in the middle of the presentation. Needs to be individualized, per Members Bill of Rights, letter O. “Right to express human sexuality and receive appropriate training;”*
- **NON-ANSWER:** *DDD is leaving this up to the Provider/Vendor. Again, needs to be individualized.*

• **Have you considered that doing this in the DTA setting could provide an atmosphere of exclusion if the Member opts out of this Instruction?**

- **Response:** *Members choose activities in Day Services that they want to do. This means often groups of members getting day services participate in different activities. This follows the same principle.*
- *But, if it is a responsible person, other than the member that is choosing for the Member to participate in the training, that takes away the Member choosing what they want to do at the DTA! SO yes, it is exclusionary. (If a Member’s friends are all in the media room watching slides, and he is not allowed, per Guardian, then yes, he will feel excluded. Lack of understanding; his group is participating in something he cannot participate in.) DTA Calendar is very structured: 1-2 items in the AM; 1-2 items in the PM, depending on Staffing, space, etc.*

• **Since this is to be reviewed annually, per chapter 64, does the Opt-in, Opt-out take place every year? Because of the sensitive nature of the curriculum, should that document be included in the Planning Document/Person Centered Plan?**

- **Response:** Annually, members and guardians decide if they want to take the training or not. Qualified vendors are required to maintain documentation of the offer. It's not currently required to be documented in the PCSP.
- *Because of the possibility of being exclusionary, this should be listed in the rights section of the Planning Document/Person Centered Plan. Additionally, in the acknowledgement section of the Planning Document/Person Centered Plan, acknowledgement from the Responsible Person/Guardian/Member that the DDD SC informed the responsible person of the training and the content to qualify for "informed consent", per Article 9.*
- *Why should this be presented every year? Is that the requirement for the Providers/Staff?*
- *IF THIS IS SO IMPORTANT WHY IS IT NOT PRESENTED AT THE 90 DAY MEETING WITH THE MEMBER AND THE TEAM? ONE MEMBER HAS HAD 3 MEETINGS, SC WAS UNAWARE OF TRAINING WHEN GUARDIAN MENTIONED THE TRAINING. THIS IS THE PLACE WHERE TWEAKING CAN TAKE PLACE. NOT APPROPRIATE AT ALL.*
- *Could become a risk; should be listed on the risk assessment*
- *Ask for an interim report since it has been rolled out since July. Share data.*
- **Refer to 41-3804 N:** If a committee's request for information or records from a department or service provider is denied, including an objection pursuant to subsection G of this section, and if requested by the committee, at least one representative of the department or service provider and at least one committee member shall meet and confer within five business days after the date of the request or on a later date that is agreed to by both parties and shall in good faith attempt to resolve the objection informally and cooperatively. After meeting and conferring, the committee may request in writing that the director of a department review this decision. The director shall timely conduct the review and, not later than twenty-one calendar days, after receiving the request for review, the director shall deliver to the committee a written decision explaining in detail the factual and legal basis and reasoning for the department's decision. The department shall bear the costs of conducting the review. A final agency decision made pursuant to this subsection is subject to judicial review pursuant to title 12, chapter 7, article 6. The department shall not release any information or records during the period an appeal may be filed or is pending:
- **41-3804 G:** Each committee shall submit written objections to specific problems or violations of client rights by the department or service provider through the director of the department of administration for review by the director of the department that is responsible for the client. The director of the department shall deliver to the committee a detailed written response to each written objection within twenty-one calendar days after receiving the objection from the department of administration.
- **Title 12: Arizona Laws > Title 12 > Chapter 7 > Article 6** – Judicial Review of Administrative Decisions

## ARTICLE 9. MANAGING INAPPROPRIATE BEHAVIORS

### **R6-6-901. Applicability**

These rules apply to:

1. All programs operated, licensed, certified, supervised or financially supported by the Division.
2. All habilitation programs as defined in A.R.S. § 36-551(18), as well as all interventions included in this Article, shall be addressed in the client's ISPP.

#### **Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-901 repealed, new Section R6-6-901 renumbered from R6-6-902 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

### **R6-6-902. Prohibitions**

**A.** The following behavioral intervention techniques are prohibited:

1. The use of seclusion (locked time-out rooms).
2. The use of overcorrection.
3. The application of noxious stimuli.
4. Physical restraints, including mechanical restraints, when used as a negative consequence to a behavior.

**B.** The use of behavior modifying medications is prohibited, except as specified in R6-6-909, if:

1. They are administered on an "as needed" or "PRN" basis; or
2. They are in dosages which interfere with the client's daily living activities; or
3. They are used in the absence of a behavior treatment plan.

**C.** No person shall implement a behavior treatment plan which:

1. Is not included as a part of the ISPP; and
2. Falls under R6-6-903(A), without approval of the PRC.

### **Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-902 renumbered to R6-6-901, new Section R6-6-902 renumbered from R6-6-903 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

### **R6-6-903. Program Review Committee (PRC)**

**A.** The ISPP team shall submit to the PRC and Human Rights Committee any behavior treatment plan which includes:

1. Techniques that require the use of force.
2. Programs involving the use of response cost.
3. Programs which might infringe upon the rights of the client pursuant to applicable federal and state laws, including A.R.S. § 36-551.01.
4. The use of behavior-modifying medications.
5. Protective devices used to prevent a client from sustaining injury as a result of the client's self-injurious behavior.

**B.** The PRC shall be responsible for approving or disapproving plans specified in subsection (A) above and any other matters referred by an ISPP team member.

**C.** The PRC shall review and respond in writing within ten working days of receipt of a behavior treatment plan from the ISPP team, either approving or disapproving the plan. The response shall be signed and dated by each member present and shall be transmitted to the ISPP team with a copy to the chairperson of the Human Rights Committee for review and recommendations at its next regularly scheduled meeting pursuant to R6-6-1701 et seq. The response shall include:

1. A statement of agreement that the interventions approved are the least intrusive and present the least restrictive alternative.
2. Any special considerations or concerns including any specific monitoring instructions.
3. Any recommendations for change, including an explanation of the recommendations.

**D.** Each PRC shall issue written reports, as prescribed by the Division, summarizing its activities, findings and recommendations while maintaining client confidentiality.

1. On a monthly basis, report to a designated Division representative, with a copy to the chairperson of the Human Rights Committee.

2. On an annual basis, by December 31 of each calendar year, report to the Assistant Director of the Division of Developmental Disabilities, with a copy to the Developmental Disabilities Advisory Council.

**E.** The PRC shall be composed of, but not be limited to, the following persons designated by the District Program Manager:

1. The District Program Manager or his designee, who shall act as a chairperson.

2. A person directly providing habilitation services to clients.

3. A person qualified, as determined by the Division, in the use of behavior management techniques, such as a psychologist or psychiatrist.

4. A parent of an individual with a developmental disability but not the parent of the individual whose program is being reviewed.

5. A person with no ownership in a facility and who is not involved with providing services to individuals with developmental disabilities.

6. An individual with a developmental disability when appropriate.

**F.** A PRC shall be separate from but a complement to the ISPP team, and the Human Rights Committee established pursuant to R6-6-1701 et seq.

#### **Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-903 renumbered to R6-6-902, new Section R6-6-903 renumbered from R6-6-904 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### **R6-6-904. ISPP Team Responsibilities**

Upon receipt of the PRC's response and as part of its development of the client's ISPP, the ISPP team shall either:

1. Implement the approved behavior treatment plan; or

2. Accept the PRC recommendation and incorporate the revised behavior treatment plan into the ISPP; or

3. Reject the recommendation in whole or in part and develop a new behavior treatment plan to be resubmitted to the PRC and Human Rights Committee.

#### **Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-904 renumbered

to R6-6-903, new Section R6-6-904 renumbered from R6-6-905 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### **R6-6-905. Monitoring Behavior Treatment Plans**

Each ISPP team shall specifically designate and record in the ISPP the name of a member of the team, excluding those direct service staff responsible for implementing the approved behavior treatment plan, who shall:

1. Ensure that the behavior treatment plan is implemented as approved.
2. Ensure that all persons implementing the behavior treatment plan have received appropriate training as specified in R6-6-906.
3. Ensure that objective, accurate data are maintained in the client's record.
4. Evaluate, at least monthly, collected data and other relevant information as a measure of the effectiveness of the behavior treatment plan.
5. Conduct on-site observations not less than twice per month and prepare, sign, and place in the client's record a report of all observations.

#### **Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-905 renumbered to R6-6-904, new Section R6-6-905 renumbered from R6-6-906 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### **R6-6-906. Training**

- A.** Any person who is involved in the use of a behavior treatment plan shall be trained by the Division or trained by an instructor approved by the Division prior to such involvement.
- B.** Initial training shall cover at a minimum:
  1. Provisions of law related to:
    - a. Interventions; particularly this Article and 42 CFR 483.450 October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;
    - b. Legally mandated rights of individuals with developmental disabilities; particularly A.R.S. §§ 36-551.01, 36-561 and 42 CFR 483.420 (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;
    - c. Confidentiality; particularly A.R.S. §§ 41-1959 and 36-586.01 and 42 CFR 483.410(c)(2) (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State.

- d. Abuse and neglect prohibitions pursuant to A.R.S. § 36-569.
- 2. Intervention techniques, treatment and services, particularly addressing the risks and side effects that may adversely affect clients.
- 3. A general orientation to:
  - a. Division goals with respect to the provision of services to people with developmental disabilities.
  - b. Related policies and instructions of the Division.
- C.** With respect to the use of interventions, training shall include hands-on or practical experience to be conducted by instructors approved by the Division, using a curriculum approved by the Division, and who have experience in the actual use of interventions as opposed to administrative responsibility for such use.
- D.** In addition to initial training, the Division shall ensure that refresher training is available as necessary to maintain currency in knowledge and recent technical trends related to intervention for the management of inappropriate behavior.
- E.** Physical management techniques shall only be used by those persons specifically trained in their use.
- F.** The following records and documents related to training shall be maintained by the Division for five years and be available for public inspection.
  - 1. A summary of the training plan adopted by the Division in compliance with this Section, including schedules, instructors, topics, and expressed parameters of the hands-on or practical experience component of the training.
  - 2. Required special knowledge, skills, training, education or experience of the instructors related to managing inappropriate behaviors.
  - 3. A list of persons satisfactorily completing initial and refresher courses and course dates.
- G.** The Division shall review the training plan at least every two years for compliance with all applicable provisions of law and Division policy as well as for the protection of clients.

#### **Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-906 renumbered to R6-6-905, new Section R6-6-906 renumbered from R6-6-907 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### **R6-6-907. Sanctions**

For programs operated, licensed, certified, supervised or financially supported by the Division, failure to comply with any part of this Article may be grounds for suspension or revocation of a license, for termination of contract, employment, or for any other applicable administrative or judicial remedy.

#### **Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-907 renumbered to R6-6-906, new Section R6-6-907 renumbered from R6-6-908 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

#### **R6-6-908. Emergency Measures**

**A.** Physical management techniques employed in an emergency to manage a sudden, intense, or out-of-control behavior shall:

1. Use the least amount of intervention necessary to safely physically manage an individual.
2. Be used only when less restrictive methods were unsuccessful or are inappropriate.
3. Be used only when necessary to prevent the individual from harming self or others or causing severe damage to property.
4. Be used concurrently with the uncontrolled behavior.
5. Be continued for the least amount of time necessary to bring the individual's behavior under control.
6. Be appropriate to the situation to ensure safety.

**B.** When an emergency measure, including the use of behavior modifying medications pursuant to R6-6-909(D), is employed to manage a sudden, intense, out-of-control behavior, the person employing that measure shall:

1. Immediately report the circumstances of the emergency measure to the person designated by the Division and to the responsible person.
2. Provide, within one working day, a complete written report of the circumstances of the emergency measure to the responsible person, the case manager, the chairperson of the Program Review Committee, and the Human Rights Committee.
3. Request that the case managers reconvene the ISPP team to determine the need for a new or revised behavior treatment plan when any emergency measure is used two or more times in a 30-day period or with any identifiable pattern.

**C.** Upon receipt of a written report as specified in subsection (B)(2) above, the PRC shall:

1. Review, evaluate and track reports of emergency measures taken; and
2. Report, to a person designated by the Division, instances of possible excessive or inappropriate use of emergency measures on a case-by-case basis for corrective action.

#### **Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-908 renumbered to R6-6-907, new Section R6-6-908 renumbered from R6-6-909 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

### **R6-6-909. Behavior-modifying Medications**

- A.** The Division shall make available the services of a consulting psychiatrist who shall review cases and provide recommendations to prescribing physicians to ensure that the medication prescribed is the most appropriate in type and dosage to meet the client's needs.
- B.** Behavior-modifying medications shall be prescribed and administered only:
1. When, in the opinion of a licensed physician, they will be effective in producing an increase in appropriate behaviors; and it can be justified that the harmful effects of the behavior clearly outweigh the potential negative effects of the behavior modifying medication.
  2. As part of a behavior treatment plan in the ISPP.
  3. With the informed consent of the responsible person.
- C.** The Division shall provide the following monitoring, in addition to that specified in R6-6-905, for all behavior treatment plans that include the use of a behavior-modifying medication:
1. Ensure that collected data relative to the client's response to the medication is evaluated, at least quarterly, at a medication review by the physician and the member of the ISPP team designated pursuant to R6-6-905 and other members of the ISPP team as needed.
  2. Ensure that each client receiving a behavior-modifying medication is screened for side effects, and Tardive Dyskinesia as needed, and that the results of such screening are:
    - a. Documented in the client's case record;
    - b. Provided immediately to the physician, responsible person, and ISPP team for appropriate action if the screening results are positive; and
    - c. Provided to the Program Review Committee and the Human Rights Committee within 15 working days for review of screening results that are positive.

**D.** In the event of an emergency, a physician's order for a behavior modifying medication may, if appropriate, be requested for a specific one-time emergency use. The person administering the medication shall immediately report it pursuant to R6-6-908(B).

**E.** The responsible person shall immediately be notified of any changes in medication type or dosage.

**Historical Note**

Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-909 renumbered to R6-6-908, new Section R6-6-909 renumbered from R6-6-910 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-910. Renumbered**

**Historical Note**

**Adopted effective February 21, 1990 (Supp. 90-1). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-910 renumbered to R6-6-909 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).**

36-552. Developmental disabilities function; expenditure limitation

A. The department shall function as the developmental disabilities authority for the state of Arizona.

B. No provisions of this chapter shall be construed to give the department control of lawful activities of other governmental agencies or of activities of the universities or colleges of this state in the field of developmental disabilities, unless by specific contract or agreement therefor.

C. Subject to annual legislative appropriation and other available funding, the department shall provide a wide variety of developmental disability programs and services throughout the state in response to the wide range of developmental disability conditions, the capabilities of persons with developmental disabilities and the presence of other disabling conditions for persons with developmental disabilities.

D. The department may contract with other state agencies and with private agencies to provide the developmental disabilities program or service.

E. The total amount of state monies that may be spent in any fiscal year by the department for developmental disabilities services pursuant to this chapter shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This chapter shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-554. Powers and duties of director

A. The director shall:

1. Be responsible for developing and annually revising a statewide plan and initiating statewide programs and services for persons with developmental disabilities in locations where the programs and services are necessary, which shall include:

(a) Child services, which may include infant stimulation, developmental training for pre-school children and special education at Arizona training program facilities for school-age, children with developmental disabilities residing at Arizona training program facilities who do not attend public school.

(b) Adult services, in coordination with the vocational rehabilitation services of the department, which may include but not be limited to job training and training and adjustment services, job development and placement, sheltered employment and other nonvocational day activity services for adults.

(c) Residential services, including various community residential settings, Arizona training program facilities and state operated service centers which provide varying levels of supervision in accordance with the developmental disability levels of the persons placed at such settings, facilities

or centers. The department shall contract with private profit or nonprofit agencies to provide appropriate residential settings for persons with developmental disabilities which provide for regular assistance and supervision of such persons and which provide varied developmental disability programs and services on or near the community residential setting.

(d) Resource services, which may include comprehensive evaluation services, information and referral services and outpatient rehabilitation and social development services. The department in providing developmental disability programs and services shall whenever practicable utilize qualified private contractors. In selecting private contractors, the department shall utilize those contractors which can clearly demonstrate an ability to perform such contract in accordance with standards and specifications adopted by the department.

2. Establish standards, provide technical assistance, and supervise all developmental disability programs and services operated by or supported by the department.

3. Coordinate the planning and implementation of developmental disability programs and activities, institutional and community, of all state agencies, provided this shall not be construed as depriving other state agencies of jurisdiction over, or the right to plan for, control, and operate programs that pertain to developmental disability programs but that fall within the primary jurisdiction of such other state agencies.

4. Periodically assess the effectiveness of the quality assurance system as required by 42 Code of Federal Regulations section 434.34 as it pertains to developmental disabilities programs.

5. License community residential settings pursuant to this chapter.

6. Develop rules establishing a procedure for handling complaints about community residential settings.

7. Inform in writing every parent or guardian of a client with a developmental disability residing at or transferring to a community residential setting of the complaint handling procedure.

8. As new community residential settings are developed over a period of time, reduce the clientele at Arizona training program facilities to those persons with developmental disabilities who are required to be in Arizona training program facilities because the community lacks an appropriate community residential setting that meets their individual needs or whose parents or legal guardians want them in an Arizona training program facility.

9. In conjunction with the division, individuals with developmental disabilities and their families, advocates, community members and service providers, develop, enhance and support environments that enable individuals with developmental disabilities to achieve and maintain physical well-being, personal and professional satisfaction, participation as family and community members and safety from abuse and exploitation.

10. Do all other things reasonably necessary and proper to carry out the duties and the provisions of this chapter.

11. Adopt rules regarding procurement procedures similar to those found in title 41, chapter 23.

B. Programs and services offered pursuant to subsection A, paragraph 1 of this section shall be provided in cooperation with public and private resources that can best meet the needs of persons with developmental disabilities and that are located in the community and in proximity to the persons being served.

C. The director may:

1. Establish nonresidential outpatient programs for placement, evaluation, care, treatment and training of persons with developmental disabilities residing in the community who are not eligible for public school programs, and who do not have access to other state supported programs providing equivalent services.

2. Develop cooperative programs with other state departments and agencies, political subdivisions of the state, and private agencies concerned with and providing services for persons with developmental disabilities.

3. Contract for the purchase of services with other state and local governmental or private agencies. Such agencies are authorized to accept and expend funds received pursuant to such contracts.

4. Stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the prevention of developmental disabilities and improved methods of care and training for persons with developmental disabilities.

5. Apply for, accept, receive, hold in trust or use in accordance with the terms of the grant or agreement any public or private funds or properties, real or personal, granted or transferred to it for any purpose authorized by this chapter.

6. Make and amend rules from time to time as deemed necessary for the proper administration of programs and services for the treatment of persons with developmental disabilities, for the admission of persons with developmental disabilities to the programs and services and to carry out the purposes of this chapter.

#### 41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.
3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.
6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that is judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these

persons, as appearing in customer records of public utilities, cable operators and video service providers.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

**DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**  
Title 20, Chapter 6, Article 4

**Amend:** R20-6-407



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 21, 2022

**SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**  
Title 20, Chapter 6, Article 4

**Amend:** R20-6-407

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### **Summary:**

This regular rulemaking from the Department of Insurance and Financial Institutions seeks to amend one (1) rule in Title 20, Chapter 6, Article 4, related to Service Companies. In this rulemaking, the Department intends to amend the rules to comply with recent changes to the Service Company Act (A.R.S. §§ 20-1095 to 20-1095.10).

The Department received an initial exception from the rulemaking moratorium to initiate this rulemaking on March 29, 2021 and final approval to submit it to the Council on October 17, 2022.

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

Yes, the Department cites both general and specific statutory authority for these rules.

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

No, the Department indicates that the rules do not establish a new fee or contain a fee increase.

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

No, the Department indicates that it did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Department states that the purpose of this rulemaking is to align with and clarify the existing statutory requirements for service companies. The rulemaking clarifies the statutory requirements by defining statutory terms, itemizing permit application and renewal requirements, defining the term of a permit, providing guidance regarding the financial responsibility requirements listed in A.R.S. § 20-1095.04, and listing the provisions that are reviewed by the Department in policy form filings.

Listing the policy form filing provisions is intended to improve the understandability of the forms, allowing consumers to make more informed decisions when entering into service contracts. Improving the understandability of the forms is anticipated to reduce consumer complaints received by the Department, as well as reduce the resources that service companies allocate to responding to such complaints.

The Department anticipates that service companies will incur compliance costs associated with the permitting and form approval processes. However, the improved understandability of the forms is anticipated to reduce the costs associated with responding to customer complaints.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department notes that the rulemaking is required by statute, and costs incurred are due to the statute rather than the rule. The Department further states that industry stakeholders have not identified any costs associated with the rule other than the compliance costs of form filings. By eliminating the requirement for new form filings, the Department indicates that it has selected the course of action that imposes the least burden and costs to those who are regulated.

6. **What are the economic impacts on stakeholders?**

The Department anticipates minimal financial impact to service companies, including no anticipated effect on revenues or payroll expenditures. The changes to the statutory sections have been in place since 2018 and 2021, which the industry ran with no

Department input. Service companies should be well aware of any changes they need to make in order to be compliant with the statutory changes.

In addition, this rulemaking has had a high level of stakeholder involvement with cooperation from the Department to try to reduce the need for new form filings which are costly to service companies. The rule also includes changes to the renewal process that extends the term of the permit to three months after the end of the service company's fiscal year. This extends the period of time a service company can renew its permit without losing the active status of its permit. This is a benefit which will be newly available to service companies when this rule becomes effective.

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

No; the Department indicates that it has made one change between the latest supplemental proposed and final rulemaking to replace "Division" with "Department" throughout the rule. The Department indicates that this is a non-substantial change under A.R.S. § 41-1025(B).

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

Yes; between the latest supplemental proposed and final rulemaking, the Department has received one comment in support of the rulemaking. For the proposed rulemaking and supplemental proposed rulemaking, the Department received various comments from industry stakeholders. The Department responded to each comment with specificity and implemented rule amendments as needed.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that A.R.S. § 20-1095.01(A) requires a service company to obtain a traditional permit from the Department before issuing service contracts. The rule details the permit application, term, financial requirements, and renewal requirements.

The Department complies with A.R.S. § 41-1037 under A.R.S. § 41-1037(A)(2) because the Department issues traditional permits specifically authorized under A.R.S. § 20-1095.01(A).

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

No; the Department indicates that there is no corresponding federal law.

11. **Conclusion**

The Department seeks to amend one rule in Title 20, Chapter 6, Article 4 to ensure that the rule is consistent with recent statutory amendments. The Department is seeking the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



**Director's Office**  
**Arizona Department of Insurance and Financial Institutions**  
100 North 15<sup>th</sup> Avenue, Suite 261, Phoenix, AZ 85007-2624  
Phone: (602) 364-3100 | Web: <https://difi.az.gov>

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**Douglas A. Ducey, Governor**  
**Evan G. Daniels, Director**

October 18, 2022

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sornsin, Chairperson  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave., Suite 305  
Phoenix, AZ 85007

**RE:** Arizona Department of Insurance and Financial Institutions  
Insurance Division  
A.A.C. R20-6-407 – Service Companies

Dear Chairperson Sornsin:

Please find enclosed the Final Rulemaking for A.A.C. R20-6-407, the Service Companies rule, being submitted by the Arizona Department of Insurance and Financial Institutions ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. The Department closed the record on this rulemaking on September 18, 2022 (after publication of the second Notice of Supplemental Proposed Rulemaking).
- b. This rulemaking does not relate to a five-year review report. Instead, this rulemaking is an effort to conform the rule to the statutory changes made to the Service Companies Act (A.R.S. §§ 20-1095 through 20-1095.10) in 2018 (Laws 2018, Ch. 150, § 1) and 2021 (Laws 2021, Ch. 5, §§ 16-18 and Laws 2021, Ch. 163, § 1). The Department has already expired rule R20-6-408 to reflect the elimination of motor vehicle service contract programs. (24 A.A.R. 3106, November 2, 2018.)
- c. The rulemaking does not establish a new fee.
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No new full-time employees are necessary to implement and enforce the rule.
- h. The following documents are also submitted to the Council with this cover letter:
  - i. The Notice of Final Rulemaking;
  - ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;

- iii. The written comments received by the Department concerning the Notice of Proposed Rulemaking, Notice of Supplemental Proposed Rulemaking published on April 1, 2022 and Notice of Supplemental Proposed Rulemaking published on August 19, 2022. Also included are the recorded Oral Proceedings conducted on November 4, 2021 and June 14, 2022; and
- iv. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or [mary.kosinski@difi.az.gov](mailto:mary.kosinski@difi.az.gov).

Sincerely,



Evan G. Daniels  
Director

NOTICE OF FINAL RULEMAKING  
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE  
CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS  
– INSURANCE DIVISION

PREAMBLE

**1. Articles, Parts, or Sections Affected (as applicable)      Rulemaking Action**

Article 4	Amend
R20-6-407	Amend

**2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute:      A.R.S. § 20-143  
Implementing statute:      A.R.S. § 20-1095.01(C)

**3. The effective date of the rule:**

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

**4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening:	27 A.A.R. 1147, July 30, 2021
Notice of Proposed Rulemaking:	27 A.A.R. 1140, July 30, 2021
Notice of Oral Proceeding	27 A.A.R. 1596, October 1, 2021
Notice of Supplemental Proposed Rulemaking:	28 A.A.R. 681, April 1, 2022
Notice of Oral Proceeding	28 A.A.R. 1009, May 13, 2022
Notice of Supplemental Proposed Rulemaking:	28 A.A.R. 2051, August 19, 2022

**5. The agency’s contact person who can answer questions about the rulemaking:**

Name: Mary E. Kosinski  
Address: Department of Insurance and Financial Institutions  
100 N. 15th Ave., Suite 261  
Phoenix, Arizona 85007-2630  
Telephone: (602)364-3476  
E-mail: mary.kosinski@difi.az.gov  
Web site: <https://difi.az.gov>

**6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

In 2018, the Legislature enacted sweeping changes to the service company statutes found at Arizona Revised Statutes ("ARS") §§ 20-1095 through 20-1095.10 ("Service Company Act") (Laws 2018, 2<sup>nd</sup> Reg. Sess., Ch. 150, § 1). Further changes have been enacted since that time (Laws 2021, Ch. 5, §§ 16 - 18 and Laws 2021, Ch. 163, § 1). The Arizona Department of Insurance and Financial Institutions, Insurance Division (“Department”) has already expired rule R20-6-408 to reflect the elimination of motor vehicle service contract programs. A.A.C. R20-6-407 requires changes to capture the current statutory requirements enacted in the Service Company Act.

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

The Department did not review and does not propose to rely on any study relevant to this rulemaking.

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

The rulemaking regulates service companies which is of statewide interest to persons purchasing service contracts. The rulemaking does not diminish a previous grant of authority granted to the Department.

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

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to change any conduct of service companies not already required by statute. Instead, the rule clarifies statutory terms that are vague, itemizes what an applicant must submit when applying for a permit or a renewal of a permit while allowing for the late-renewal of a permit, defines the term of a permit, provides guidance on meeting the financial responsibility requirements of A.R.S. § 20-1095.04, and notifies service companies of the provisions the Department will be reviewing in policy form filings.
- The purpose of notifying service companies about policy forms is to promote more understandable forms which should allow consumers to make more informed decisions when entering into service contracts. Having informed consumers should reduce the complaints received by the Department about service company contracts and the time and attention that service companies must expend when responding to those complaints.

Pursuant to A.R.S. § 41-1055(A)(2):

- The costs incurred by service companies are not expected to impact revenues or payroll expenditures. Instead, the costs incurred are compliance costs incurred during the permitting process and forms approval process. Having more understandable policy forms should reduce costs to service companies incurred when responding to complaints filed with the Department.
- Industry groups have not articulated any specific costs other than costs associated with form filings. The Department believes that by eliminating provisions that require new form filings, it has selected an alternative that imposes the least burden and costs to persons regulated by the rule.

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

The Department published the original Notice of Proposed Rulemaking for Service Companies on July 30, 2021. (27 A.A.R. 1140, July 30, 2021.) At that time it also opened a Comment Period. During the Comment Period, a party requested an Oral Proceeding which had the effect of extending the Comment Period to the date of the Oral Proceeding. The Department scheduled and conducted the Oral Proceeding on November 4, 2021. (27 A.A.R. 1596, October 1, 2021.) As a result of the changes requested by the participants who were all service company industry representatives, the Department published a Notice of Supplemental Proposed Rulemaking on April 1, 2022. (28 A.A.R. 681, April 1, 2022.) The Notice of

Supplemental Proposed Rulemaking published on April 1, 2022, contained the following revisions to A.A.C. R20-6-407 from the original Notice of Proposed Rulemaking:

- Amending subsection (B)(7)(a), the definition for “Reasonable time” or “Reasonable period of time” from “As used in A.R.S. § 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered but not more than two business days after the purchase date of the contract. If the service company mails the contract, it can establish proof of mailing by USPS certified mail or first class mail using intelligent barcode or another similar tracking method used or approved by the USPS. If a service company electronically delivers the contract it must be delivered consistent with the requirements of Title 44, Chapter 26.” to “As used in A.R.S. § 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered but not more than ten business days after the purchase date of the contract. The service company must be able to provide proof of delivery if requested by the Division.”
- Adding subsection (B)(9) which is a definition for “Subcontractor” as “means a person or business having a contractual relationship with the service company to provide work or services which a service company has agreed to perform under a service contract. If required by the type of work being performed, all subcontractors must be licensed.”
- Amending subsection (C)(2)(h), which governs information required in the application for a permit, from “A list of the applicant’s officers, directors, managers, and persons owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company;” to “A list of the applicant’s officers, directors, LLC managers, and persons owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company;”
- Deleting subsection (C)(2)(j) from the information required in the application for a permit which read “The types of items the applicant intends to cover under its service contracts;”
- Renumbering subsection (C)(2)(k) to (C)(2)(j).
- Renumbering subsection (C)(2)(l) to (C)(2)(k) and amending the information required in the application for a permit from “A summary of the applicant’s financial position;” to “A summary of the applicant’s financial position including current assets, current liabilities, equity and income;”
- Renumbering subsection (C)(2)(m) to (C)(2)(l).
- Renumbering subsection (C)(2)(n) to (C)(2)(m) and amending the information required in the application for a permit from “Any other information the Division deems necessary.” to “Any other information the Division deems necessary to aid in the approval of the application.”
- Amending subsection (C)(3)(a) which lists the attachments required in the application for a permit from “A copy of the service company’s most recent financial statement, including an income statement and a balance sheet, verified by a certified public accountant.” to “A copy of the service company’s most recent financial statement sworn to and certified by the owner, duly elected

officer or a certified public accountant.”

- Amending subsection (C)(3)(c) which lists the attachments required in the application for a permit from “A biographical affidavit, on a form approved by the Division, for each officer, director, manager, or person owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company.” to “A biographical affidavit, on a form approved by the Division, for each officer, director, LLC manager, or person owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company.”
- Deleting subsection (C)(3)(d) from the attachments required in the application for a permit which read “A list of subcontractors who are under common ownership or control or are affiliated with the applicant. If required by the type of work being performed, all subcontractors must be licensed.”
- Renumbering subsection (C)(3)(e) to (C)(3)(d) and amending the attachments required in the application for a permit from “A list of any actions taken against the applicant and a list of actions taken against any of the owners, officers, managers, or directors of the applicant in any jurisdiction by a regulatory agency or state attorney general.” to “A list of any actions taken against the applicant in any jurisdiction by a regulatory agency or state attorney general.”
- Amending subsection (D)(2), which pertains to the term of a service company permit, from “The Division is not required to issue a paper copy of the service company permit.” to “The Division is not required to issue a paper copy of the service company permit. However, the Division will make a copy of the service company permit available by electronic or other means.”
- Amending subsection (E)(2)(d), which governs the information required in a service company permit renewal form, from “Any changes to the types of items the service company intends to cover under its service contracts; and” to “A summary of the applicant’s financial position including current assets, current liabilities, equity and income; and”
- Amending subsection (E)(2)(e), which governs the information required in a service company permit renewal form, from “Any other information the Division deems necessary.” to “Any other information the Division deems necessary to aid in the renewal of the permit.”
- Amending subsection (E)(3)(a) which lists the attachments required in the permit renewal form from “A copy of the service company’s financial statement as of the end of the service company’s most recently completed fiscal year, including an income statement and a balance sheet, verified by a certified public accountant.” to “A copy of the service company’s financial statement as of the end of the service company’s most recently completed fiscal year, sworn to and certified by the owner, duly elected officer or a certified public accountant.”
- Amending subsection (E)(3)(c) which lists the attachments required in the permit renewal form from “Any additions or deletions to the officers, directors, managers, or persons owning 25% or more of the service company, or to an entity that owns the service company since the last report to

the Division.” to “Any additions or deletions to the officers, directors, LLC managers, or persons owning 25% or more of the service company, or to an entity that owns the service company since the last report to the Division.”

- Deleting subsection (E)(3)(e) from the attachments required in the permit renewal form which read “Any additions or deletions to the subcontractors that are under common ownership or control or are affiliated with the service company since the last report to the Division. If required by the type of work being performed, all subcontractors must be licensed.”
- Renumbering subsection (E)(3)(f) to (E)(3)(e) and amending the attachments required in the permit renewal form from “Any actions taken against the service company or any of the owners, officers, or directors of the service company in any jurisdiction by a regulatory agency or state attorney general not previously reported to the Division.” to “Any actions taken against the service company in any jurisdiction by a regulatory agency or state attorney general not previously reported to the Division.”
- Amending subsection (G)(2)(b), which governs the content of service company forms, from “Itemizes each of the systems, products and appliances covered by the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those systems, products, and appliances which are excluded from coverage. Any item or component not specifically excluded from a covered system, product or appliance is covered;” to “Identifies the covered products under the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those products which are excluded;”
- Amending subsection (G)(2)(f), which governs the content of service company forms, from “Notifies the contract holder that the denial of a claim can be appealed if the contract holder can produce a home inspection report, maintenance records, or other evidence that show the contract holder was not aware, at the time of contracting, of any preexisting condition that would be the basis for the denial of the claim;” to “Notifies the contract holder that the denial of a claim can be appealed if the contract holder can produce a home inspection report or maintenance records, or other applicable supporting documents;”
- Amending subsection (G)(2)(i), which governs the content of service company forms, from “States that the administrative expenses may not exceed \$75 or 10% of the purchase price of the service contract, whichever is less, when providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract.” to “If providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract, the service contract shall contain language in conformance with A.R.S. § 20-1095.06(D)(9).”

The Notice of Supplemental Proposed Rulemaking published on April 1, 2022 opened a Comment Period. During the Comment Period, a party requested an Oral Proceeding which had the effect of extending the

Comment Period to the date of the Oral Proceeding. The Department scheduled and conducted a second Oral Proceeding on June 14, 2022. (28 A.A.R. 1009, May 13, 2022.) As a result of the changes requested by the participants who were all service company industry representatives, the Department published a second Notice of Supplemental Proposed Rulemaking on August 19, 2022. (28 A.A.R. 2051, August 19, 2022.) The Notice of Supplemental Proposed Rulemaking published on August 19, 2022, contained the following revisions to A.A.C. R20-6-407 from the April 1, 2022 Notice of Supplemental Proposed Rulemaking:

- Deleting subsection (G)(2)(f), which governs the content of service company forms, which read “Notifies the contract holder that the denial of a claim can be appealed if the contract holder can produce a home inspection report or maintenance records, or other applicable supporting documents;”
- Renumbering subsection (G)(2)(g) to (G)(2)(f).
- Renumbering subsection (G)(2)(h) to (G)(2)(g).
- Renumbering subsection (G)(2)(i) to (G)(2)(h).

The Department received no request for an Oral Proceeding during the comment period and received one comment from industry representatives in support of the second Notice of Supplemental Proposed Rulemaking published on August 19, 2022.

One change, which the Department does not consider a substantive change, has been made to this Notice of Final Rulemaking from the Notice of Supplemental Proposed Rulemaking published on August 19, 2022. (28 A.A.R. 2051, August 19, 2022.) Because the rule was originally drafted when the Insurance Division was first established, “Division” was used throughout the rule to refer to the Insurance Division of the Department. Since that time, the Department has made the decision that it prefers to use the more general term “Department,” in rules. Consequently, “Division” has been replaced with “Department” throughout the rule and the following changes have been made to the Definitions:

- Subsection (B)(2) amended from ““Department” means the Arizona Department of Insurance and Financial Institutions.” to “Department” means the Arizona Department of Insurance and Financial Institutions, Insurance Division.”
- Subsection (B)(4) definition for “Division” deleted and the remaining subsections renumbered.

**11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

The Department received comments from the following industry groups on the Notice of Proposed Rulemaking, Notice of Supplemental Proposed Rulemaking published on April 1, 2022 and the Notice of Supplemental Proposed Rulemaking published on August 19, 2022:

- The American Property Casualty Insurance Association (“APCIA”)
- The Consumer Credit Industry Association (“CCIA”)

- The National Home Service Contract Association (“NHSCA”)
- The Service Contract Industry Council (“SCIC”)

The Department received comments from the following additional industry group on the Notice of Supplemental Proposed Rulemaking published on August 19, 2022:

- The Motor Vehicle Protection Products Association

No consumers or consumer groups commented on the rulemaking.

### **Proposed Rulemaking published July 30, 2021**

For the Notice of Proposed Rulemaking published by the Department on July 30, 2021 (27 A.A.R. 1140, July 30, 2021), the stakeholders made the following summarized comments with the Department’s response:

#### **Definitions**

Subsections R20-6-407(B)(5) which read: “Insolvent” as used in A.R.S. § 20-1095.08(3) means total liabilities are equal to or exceed total assets.” and R20-6-407(B)(8) which read: “Solvent” as used in A.R.S. § 20-1095.03(A)(1) means total assets exceed total liabilities.”

Summarized comment: Definition is too narrow and should include the inability to pay debts as they become due.

Department response: Because of the limited financial reporting required of service companies for the permit and renewal process, the Department has no way of determining whether a service company is able to pay its debts as they become due. No change made.

Subsection R20-6-407(B)(6) which read: “Provider” means a person who is contractually obligated to the service contract holder under the terms of a service contract. “Provider” is synonymous with “service company” and “obligor” as defined in A.R.S. § 20-1095(6).”

Summarized comment: “Provider” is not used in the regulation and a definition for it is unnecessary.

Department response: “Provider” is used extensively throughout the statutory sections without a statutory definition. No change made.

Subsection R20-6-407(B)(7)(a) which read: “Reasonable time” or “Reasonable period of time:” a. As used in A.R.S. 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered by not more than two business days after the purchase date of the contract. If a service company mails the contract, it can establish proof of mailing by USPS certified mail or first class mail using intelligent barcode or another similar tracking method used or approved by the USPS. If a service company electronically delivers the contract it must be delivered consistent with the requirements of Title 44, Chapter 26.”

Summarized comment: The requirements are burdensome, impose significant expense and unreasonable operational requirements without benefit to the consumer. Adds requirements to the statutory definition. A longer period of time (two weeks or 30 days) for delivery is considered reasonable. No state service contract statute requires proof of delivery.

Department response: Definition in subsection (B)(7)(a) amended to read: “As used in A.R.S. § 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered but not more than 10 business days after the purchase date of the contract. The service company must be able to provide proof of delivery if requested by the Department.” Change reflected in Notice of Supplemental Proposed Rulemaking

published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(B)(7)(b) which read: “Reasonable time” or “Reasonable period of time:” b. As used in A.R.S. § 20-1095.09(A)(4), is what an ordinary person would consider “reasonable” under the totality of the circumstances.”

Summarized comment: This definition is highly subjective and could lead to confusion in the industry.

Department response: A.R.S. § 20-1095.09(A) allows: “A. The director may order any service company, its agents, officials and representatives, a motor vehicle dealer or an administrator to cease and desist from engaging in any unfair trade practices if upon notice and a hearing it is determined that the person has engaged in such practices. Unfair trade practices include: . . . 4. The failure to perform the services promised under the service contract within a reasonable time and in a competent workmanlike manner.” The Department is merely seeking to provide guidance in the context of an administrative hearing for an administrative law judge (“ALJ”) in interpreting this statute. Many complaints received by the Department involve failure of systems and inadequate response times by service companies. The rule clarifies that the standard an ALJ should use is an “ordinary person” expectation of performance under the circumstances. No change made.

#### **Application for a service company permit**

Subsection R20-6-407(C)(2)(f) which read: “Application. . . f. Applicant’s addresses, phone numbers, email address or addresses and website address or addresses.” and subsection R20-6-407(C)(2)(g) which read: “g. Name, address, and phone number or email address for each contact person of the applicant;”

Summarized comment: Information required in subsection (g) is duplicative of the information already required to be provided in subsection (f). Already provided in biographical affidavits.

Department response: Contact person is not typically an officer of the company. In addition, biographical affidavits do not contain email addresses and phone numbers. The Department needs both an administrative contact to answer questions about the application and a contact person for consumer complaints. No change made.

Subsection R20-6-407(C)(2)(h) which read: “Application. . . h. A list of the applicant’s officers, directors, managers, and persons owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company;”

Summarized comment: Biographical affidavit already provides information. This subsection is redundant and should be deleted. Appears to be an expansion of the disclosure requirements to list all “managers.”

Department response: Subsection (C)(2)(h) amended to read: “A list of the applicant’s officers, directors, LLC managers, and persons owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company;” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(C)(2)(j) which read: “Application. . . j. The types of items the applicant intends to cover under its service contracts;”

Summarized comment: Ambiguous and undefined. Recommend replacing “types of items” with “lines of business.”

Department response: Asking for lines of business. Used to track information so that the Department can respond to inquiries from consumers. Subsection is deleted. Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(C)(2)(l) which read: “Application. . . l. A summary of the applicant’s financial position;”

Summarized comment: This is a duplicative and ambiguous requirement. This information is already required under subsection (C)(3)(a). What constitutes a summary is unclear.

Department response: The service company permit application is a “Smart” form which asks the applicant to supply 4 fields: income, assets, liabilities, and equity. Only if the numbers indicate insolvency does the system prompt the applicant for further information. Use of the “Smart” form has reduced the time to process the applicant’s information and eliminates the need for the Department to request additional information. No change made.

Subsection R20-6-407(C)(2)(n) which read: “Application. . . n. Any other information the Division deems necessary.”

Summarized comment: Carte blanche language which allows for the DOI to ask for anything without notice is unfair and unduly burdensome. Language is too broad and confusing. Include some limiting language.

Department response: Subsection (C)(2)(n) amended to read: “Any other information the Division deems necessary to aid in the approval of the application.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

#### **Application for a service company permit – application attachments**

Subsection R20-6-407(C)(3)(c) which read: “Application attachments. . . c. A biographical affidavit, on a form approved by the Division, for each officer, director, manager, or person owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company.”

Summarized comment: Appears to be an expansion of the disclosure requirements to list all “managers.”

Department response: Subsection (C)(3)(c) is amended to read: “A biographical affidavit, on a form approved by the Division, for each officer, director, LLC manager, or person owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(C)(3)(d) which read: “Application attachments. . . d.. A list of subcontractors who are under common ownership or control or are affiliated with the applicant. If required by the type of work being performed, all subcontractors must be licensed.”

Summarized comment: Conflicts with A.R.S. § 20-1095.01. “Subcontractors” is a broad and undefined term which would confuse contract holders. The contract form already identifies the provider and administrator.

Department response: Subsection (C)(3)(d) is deleted. Instead, a definition for “Subcontractor” is added to subsection R20-6-407(B) to read: “9. “Subcontractor” means a person or business having a contractual relationship with a service company to provide work or services which a service company has agreed to perform under a service contract. If required by the type of work being performed, all subcontractors must be licensed.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(C)(3)(e) which read: “Application attachments. . . e. A list of any actions taken against the applicant and a list of actions taken against any of the owners, officers, managers, or directors of the

applicant in any jurisdiction by a regulatory agency or state attorney general.”

Summarized comment: Goes beyond statutory, NAIC and biological affidavit requirements. Too broad of a net.

Department response: Subsection (C)(3)(e) is amended to read: “A list of any actions taken against the applicant in any jurisdiction by a regulatory agency or state attorney general.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

#### **Term of service company permit**

Subsection R20-6-407(D)(2) which reads: “Term of service company permit. . . . 2. The Division is not required to issue a paper copy of the service company permit.”

Summarized comment: How will the Department notify applicants of their authority? Need clarifying language.

Department response: Subsection (D)(2) is amended to read: “The Division is not required to issue a paper copy of the service company permit. However, the Division will make a copy of the service company permit available by electronic or other means.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

#### **Permit renewal form**

Subsection R20-6-407(E) which read: “Service company permit renewal and late-renewal. . . . 2. Renewal form. A service company shall use the renewal form designated by the Division. The renewal form shall contain the following information:”

Summarized comment: Renewal should be limited to changes only. Add the phrase “that differ from the prior year’s application” to subsections (E)(2)(b), (E)(2)(c), (E)(3)(c) and (E)(3)(d). Delete reference to “administrator.”

Department response: The Department believes that the form already requests changes only. Yearly update of financials is needed. Information on the administrator is required in the initial application. *See*, Subsection R20-6-407(C). No change made.

Subsection R20-6-407(E)(1) which read: “Service company permit renewal and late-renewal. 1. Timely renewal. A service company seeking to renew its permit shall file with the Division a renewal application, consisting of the renewal application form, all required attachments and the renewal fee after the end of its fiscal year but before the expiration of its permit term. . . .”

Summarized comment: Using the service company’s fiscal year conflicts with the statute. Requiring the earlier of the end of the service company’s fiscal year but before the expiration of its permit term is unreasonable and unduly burdensome.

Department response: The end of the service company’s fiscal year has always been the benchmark for the expiration of the service company’s permit term. *See*, subsection (D)(1). No change made.

Subsection R20-6-407(E)(2)(c) which read: “Renewal form. . . . c. Any changes to the service company’s contact person or persons or service contract administrator, or their contact information;”

Summarized comment: Unnecessary as the administrator’s contact information would always appear in the service contract form.

Department response: The contact person should be updated annually with the submission of the permit renewal. No change made.

Subsection R20-6-407(E)(2)(d) which read: “Renewal form. . . . d. Any changes to the types of items the service company intends to cover under its service contracts; and”

Summarized comment: “Types of items” is unclear. Subsection should be deleted.

Department response: Subsection (E)(2)(d) is deleted. Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(E)(2)(e) which read: “Renewal form. . . e. Any other information the Division deems necessary.”

Summarized comment: Exceeds the requirements of statute. Should be deleted or include some limitation.

Department response: Subsection (E)(2)(e) amended to read: “e. Any other information the Division deems necessary to aid in the renewal of the permit.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(E)(5)(c) which read: “Service company permit renewal and late-renewal. . . 5. Late-renewed application and fee. . . c. Fee. In addition to the nonrefundable renewal fee required under subsection (E)(4) of this Section, the service company shall pay a nonrefundable additional fee of \$25 per day starting the calendar day after the permit term expiration and ending on the date the service company files a complete renewal application.”

Summarized comment: Fee is arbitrary, unreasonable and excessive.

Department response: Fee has always been in place and will not be imposed before the end of the 90-day grace period which occurs after the end of the service company’s fiscal year end. Not a reportable action. No change made.

#### **Permit renewal – renewal attachments**

Subsection R20-6-407(E)(3)(a) which read: “Renewal attachments. . . a. A copy of the service company’s financial statement as of the end of the service company’s most recently completed fiscal year, including an income statement and a balance sheet, verified by a certified public accountant.”

Summarized comment: Requiring verification by a certified public accountant is an unnecessary burden not contemplated by the statutory language. SB 1049 removed the requirement for audited financials and for verification by a CPA. Resort to the prior requirement of “sworn to and certified by the owner, duly elected officer or a CPA.”

Department response: Language of subsection (E)(3)(a) amended to read: “A copy of the service company’s financial statement as of the end of the service company’s most recently completed fiscal year, sworn to and certified by the owner, duly elected officer or a certified public accountant.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(E)(3)(e) which read: “Renewal attachments. . . e. Any additions or deletions to the subcontractors that are under common ownership or control or are affiliated with the service company since the last report to the Division. If required by the type of work being performed, all subcontractors must be licensed.”

Summarized comment: Conflicts with A.R.S. § 20-1095.01(C).

Department response: Subsection (E)(3)(e) is deleted. Instead, a definition for “Subcontractor” is added to subsection R20-6-407(B) to read: “9. “Subcontractor” means a person or business having a contractual relationship with a service company to provide work or services which a service company has agreed to perform under a service contract. If required by the type of work being performed, all subcontractors must be licensed.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

## Forms

Subsection R20-6-407(G)(1) which read: "Filing of forms. 1. Contract to be submitted for approval. A service company shall submit contracts for the Division's approval according to A.R.S. § 20-1095.06. A service company is not required to submit advertisements or marketing materials for approval by the Division but shall abide by the provisions of Title 20, Chapter 2 – Article 6, Chapter 4 – Article 11, and this Section regarding misrepresentations in the sales of service contracts."

Summarized comment: Application of insurance laws is prohibited by A.R.S. § 20-1095.02(C).

Department response: A.R.S. § 20-1095.02(C) states, in relevant part, that a service company is not subject to the insurance laws ". . . unless a provision is made expressly applicable to this article." Chapter 2 – Article 6 is made expressly applicable to service companies by A.R.S. § 20-441(B) which states: "For the purposes of this article, "insurance company" or "insurer" means any: . . . 9. Service company as defined in this title. . . ." Chapter 4 – Article 11 is the Article governing service companies. No change made.

Subsection R20-6-407(G)(2)(b) which read: "Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . b. Itemizes each of the systems, products and appliances covered by the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those systems, products, and appliances which are excluded from coverage. Any item or component not specifically excluded from a covered system, product or appliance is covered;"

Summarized comment: Significant change in risk and conflicts with A.R.S. § 20-1095.06(D)(6). Would require the service company to constantly maintain a constantly evolving list of items or components and is therefore overly burdensome and unrealistic. Goes too far in affirming coverage for any item or component not specifically excluded. These are contracts of inclusion not exclusion. This provision would require constant change and refile of forms.

Department response: Language of subsection (G)(2)(b) amended to read: "Identifies the covered products under the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those products which are excluded;" Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-407(G)(2)(d) which read: "Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . d. Specifies in clear and easily understood language the specific circumstances under which a contract holder may engage a subcontractor who is not recommended by the service company without becoming financially responsible under the contract and whether pre-authorization is required prior to engaging a subcontractor who is not recommended by the service company."

Summarized comment: Appears to prohibit pre-authorization. Difficult to administer. May lead to an endless cycle of form changes and excessively long contract forms. Could result in faulty repairs being made.

Department response: This works with the "reasonable time" definition in allowing a contract holder to procure a contractor when the service company cannot provide one on a timely basis. No change made.

Subsection R20-6-407(G)(2)(e) which read: "Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . e. Specifies in clear and easily understood language the service company's financial responsibilities to the contract holder when any of the systems, products or appliances covered by the contract cannot be replaced or repaired;"

Summarized comment: Unclear language that could lead to contract holder confusion. Administrator can resolve claims.

Department response: Consumer protection provision. No change made.

Subsection R20-6-407(G)(2)(f) which read: “Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . f. Notifies the contract holder that the denial of a claim can be appealed if the contract holder can produce a home inspection report, maintenance records, or other evidence that show the contract holder was not aware, at the time of contracting, of any preexisting condition that would be the basis for the denial of the claim:”

Summarized comment: Expands the disclosure required regarding preexisting conditions under A.R.S. § 20-1095.06(D)(12). Adds potential burden to the provider to have to cover preexisting conditions.. “Other evidence” is ambiguous. Creates an appeal process for claim denials based on preexisting conditions.

Department response: Language of subsection (G)(2)(f) amended to read: “Notifies the contract holder that the denial of a claim can be appealed if the contract holder can produce a home inspection report or maintenance records, or other applicable supporting documents.” Change reflected in Notice of Supplemental Proposed Rulemaking published April 1, 2022. (28 A.A.R. 681, April 1, 2022)

Subsection R20-6-(G)(2)(h) which read: “Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . h. States the dates of coverage under the service contract including any delay in coverage that differs from the purchase date of the contract which would extend the coverage term of the contract and any terms that govern renewal of the service contract; and”

Summarized comment: Exceeds the requirements of A.R.S. § 20-1095.06 which does not require that any coverage be extended or renewed. Add “if applicable” for clarity. Terms already addressed in the base form.

Department response: When a service contract has a waiting period, the contract holder may lose coverage during the waiting period and be short-changed. This corrects this problem. No change.

Subsection R20-6-407(G)(2)(i) which read: “Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . i. States that the administrative expenses may not exceed \$75 or 10% of the purchase price of the service contract, whichever is less, when providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract.

Summarized comment: Requires disclosure even if no cancellation. Conflicts with A.R.S. § 20-1095.06(D)(9) which requires disclosure “if applicable.”

Department response: Language of subsection (G)(2)(i) amended to read: “If providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract, the service contract shall contain language in conformance with A.R.S. § 20-1095.06(D)(9).”

The Department also received the following general comments not related to any rule subsection:

- The Department exceeds the authority granted by A.R.S. § 20-1095.01(C).
- Changes to forms should be allowed on a going-forward basis.

Subsequent to the Oral Proceeding conducted on November 4, 2021, the Department had additional meetings with stakeholders on January 5, 2022 and February 24, 2022. The Department published agendas for both these meetings on the Department of Administration public meetings website (<https://publicmeetings.az.gov/>).

### **Supplemental Proposed Rulemaking published April 1, 2022**

For the Notice of Supplemental Proposed Rulemaking published by the Department on April 1, 2022 (28 A.A.R. 681, April 1, 2022), the stakeholders made the following summarized comments with the Department’s response:

## **Definitions**

Subsection R20-6-407(B)(7)(a) which read: “7. Reasonable time” or “Reasonable period of time:” a. As used in A.R.S. § 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered but not more than 10 business days after the purchase date of the contract. The service company must be able to provide proof of delivery if requested by the Department.”

Summarized comment: When tied to a real estate closing, the 10-day requirement may not be able to be met. Not a rare occurrence and excludes context.

Department response: Occurrence seems too rare to drive an additional change to the subsection. Department would investigate a complaint to see if any extenuating or mitigating circumstances would excuse non-compliance. No change made.

Second Summarized comment: Maintaining proof of delivery can be cumbersome and expensive. The rule does not specify what constitutes “proof of delivery” especially for mailed contracts. Constitutes a higher standard.

Second Department response: “Proof of delivery” does not mean “proof of receipt.” The service company just needs to maintain some system that can demonstrate delivery of documents. No change made.

## **Forms**

Subsection R20-6-407(G)(2)(b) which read: “Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . b. Identifies the covered products under the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those products which are excluded;”

Summarized comment: Statute imposes “bold” but not “larger” font. “Preferably” and “larger” are ambiguous terms.

Department response: A.R.S. § 20-1095.06(D)(6) requires service contracts to be easy to read. No requirement being imposed. This is permissive language. No change made.

Second summarized comment: Requiring the “specific items or components of those products which are excluded” exceeds the authority of the statute. Rule only relates to “exclusions” and not “not covered” items.

Use language of statute regarding pre-existing conditions.

Second Department response: Does not implicate pre-existing conditions. Trying to get to specific components which are excluded from covered products. No change made.

Subsection R20-6-407(G)(2)(d) which read: “Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . d. Specifies in clear and easily understood language the specific circumstances under which a contract holder may engage a subcontractor who is not recommended by the service company without becoming financially responsible under the contract and whether pre-authorization is required prior to engaging a subcontractor who is not recommended by the service company.”

Summarized comment: Industry would like clarification that an obligor is not obligated to disclose that it does not intend to use subcontractors that it may not have a previous relationship with to perform services. Add “if applicable.”

Department response: A.R.S. § 20-1095.06(D)(10) requires that the service contract set forth all the obligations and duties of the service contract holder. This provision is just meant to inform the contract holder regarding non-obligor subcontractors. No change made.

Subsection R20-6-407(G)(2)(e) which read: “Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . e. Specifies in clear and easily understood language the service company’s financial responsibilities to the contract holder when any of the systems, products or appliances covered by the contract cannot be replaced or repaired;”

Summarized comment: Industry seeks clarification.

Department response: A.R.S. § 20-1095.06(D)(6) requires service contracts to specify any limits, exceptions or exclusions. Most contracts will set limits on what compensation they will provide to the contract holder. No change made.

Subsection R20-6-407(G)(2)(f) which read: “Filing of forms. . . . 2. Requirements for approval. No service contract form shall be approved unless it: . . . f. Notifies the contract holder that the denial of a claim can be appealed if the contract holder can produce a home inspection report or maintenance records, or other applicable supporting documents.”

Summarized comment: Adds formal appeal process. Requires language to be included in the service contract which triggers new forms that must be filed which is burdensome. Already part of the claim resolution process.

Department response: Subsection (G)(2)(f) deleted. Remaining subsections renumbered. Change reflected in Notice of Supplemental Proposed Rulemaking published August 19, 2022. (28 A.A.R. 2051, August 19, 2022)

The Department also received the following general comment not related to any rule subsection:

- Legislature intended to grandfather forms. Delay implementation of the rule to allow service companies to re-file their forms. Re-filing forms is costly to the service companies.

#### **Supplemental Proposed Rulemaking published August 19, 2022**

For the Notice of Supplemental Proposed Rulemaking published by the Department on August 19, 2022 (28 A.A.R. 2051, August 19, 2022), the stakeholders submitted one comment in support of the rulemaking.

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

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

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

A.R.S. § 20-1095.01(A) requires a service company to obtain a traditional permit from the Department before it can issue service contracts. The rule notifies applicants about applying for the permit, the term of the permit, how to comply with the financial requirements for obtaining a permit, and how to renew the permit.

A general permit is not used because, under the exception established by A.R.S. § 41-1037(A)(2), the issuance of a traditional permit is specifically authorized under A.R.S. § 20-1095.01(A).

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

No federal law is applicable to the subject of the rule.

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

No formal analysis has been submitted to the Department that compares the rule's impact of the competitiveness of business in this state to the impact of business in other states.

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

No materials are incorporated by reference.

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

Not applicable. The rule was not previously made, amended or repealed as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 6. DEPARTMENT OF INSURANCE**  
**ARTICLE 4. TYPES OF INSURANCE COMPANIES**

Section

R20-6-407. Service Companies

**R20-6-407. Service Companies**

**A. Scope.** This rule shall apply to all service companies except those ~~which~~ that are exempt under A.R.S. § 20-1095.02.

**B. Definitions.** The definitions in A.R.S. § 20-1095 apply to this rule.

1. ~~“Gray Market” auto means an imported motor vehicle which has not been certified for all safety, emission, and other federal and state standards prior to the arrival of the vehicle into the United States.~~

“Contract Holder” has the same meaning as “consumer” as defined in A.R.S. § 20-1095(1).

2. ~~“Service” within the meaning of Article 11, Chapter 4, Title 20 includes reimbursement for towing, car rental, lodging or travel breakdown expenses.~~

“Department” means the Arizona Department of Insurance and Financial Institutions, Insurance Division.

3. ~~The “Contract Holder” means the consumer as defined in A.R.S. § 20-1095(1).~~

“Director” means the Director of the Department.

4. “Insolvent” as used in A.R.S. § 20-1095.08(3) means total liabilities are equal to or exceed total assets.

5. “Provider” means a person who is contractually obligated to the service contract holder under the terms of a service contract. “Provider” is synonymous with “service company” and “obligor” as defined in A.R.S. § 20-1095(6).

6. “Reasonable time” or “Reasonable period of time:”

a. As used in A.R.S. § 20-1095.06(C)(2), means at the time of purchase or mailed or electronically delivered but not more than 10 business days after the purchase date of the contract. The service company must be able to provide proof of delivery if requested by the Department.

b. As used in A.R.S. § 20-1095.09(A)(4), is what an ordinary person would consider “reasonable” under the totality of the circumstances.

7. “Solvent” as used in A.R.S. § 20-1095.03(A)(1) means total assets exceed total liabilities.

8. “Subcontractor” means a person or business having a contractual relationship with a service company to provide work or services which a service company has agreed to perform under a service contract. If required by the type of work being performed, all subcontractors must be licensed.

**C. Application for a service company permit.**

1. Application form. The application for a service company permit ~~under this rule~~ shall be on ~~the~~ a form designated by the ~~Director which shall contain the following information:~~ Department and shall be transmitted through an electronic online system if such a system is designated on the Department’s web site. An application must be complete and have all attachments to be considered by the Department.
- a. ~~The name of applicant;~~
  - b. ~~Arizona address of applicant;~~
  - e. ~~The home office address of applicant;~~
  - d. ~~Type of entity (e.g. corporation, partnership);~~
  - e. ~~Type of equipment to be serviced;~~
  - f. ~~Fiscal year of applicant;~~
  - g. ~~A list of suspensions, revocations or other disciplinary or rehabilitative actions against the service company in this or any other jurisdiction. The application form shall be signed under oath and acknowledged by the chief executive officer, chairman of the board of directors, or other person having power of attorney, in which case the power of attorney shall be attached.~~
2. The following items shall be attached to the application form and shall complete the application:
- a. ~~A copy of the service company’s most recent financial statement, sworn to and certified by the owner, duly elected officers, or a certified public accountant.~~
  - b. ~~Evidence of having deposited cash or acceptable securities pursuant to A.R.S. § 20-1095.04.~~
  - e. ~~Surety bond in lieu of deposit under subparagraph (b) on a form acceptable to the Director.~~
  - d. ~~Initial nonrefundable permit fee of \$100 with each new application.~~
  - e. ~~A biographical affidavit, on a form approved by the director, for each officer, director, manager or person owning 25% or more of the service company, and for each officer, director, manager or person owning 25% or more of an entity which owns the service company.~~

~~f. A copy of the service company's service contract, application, claim forms, brochures, and other forms used in connection with the sale.~~

Application. The application shall contain the following information:

- a. Applicant's full legal name;
- b. Applicant's federal employer identification number (EIN);
- c. Applicant's trade name(s), if applicable;
- d. Applicant's state of domicile;
- e. Applicant's form of business entity (corporation, limited liability company, etc.);
- f. Applicant's addresses, phone numbers, e-mail address(es) and website address(es);
- g. Name, address, and phone number or e-mail address for each contact person of the applicant;
- h. A list of the applicant's officers, directors, LLC managers, and persons owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company;
- i. If the applicant intends to use a service contract administrator, the name and contact information for the applicant's service contract administrator;
- j. The applicant's fiscal year end date;
- k. A summary of the applicant's financial position including current assets, current liabilities, equity and income;
- l. The name and signature of an officer of the applicant; and
- m. Any other information the Department deems necessary to aid in the approval of the application.

3. Application attachments. The applicant shall include the following as part of the application:

- a. A copy of the service company's most recent financial statement sworn to and certified by the owner, duly elected officer or a certified public accountant.
- b. Evidence of compliance with the financial security requirements of A.R.S. § 20-1095.03(A)(3).
- c. A biographical affidavit, on a form approved by the Department, for each officer, director, LLC manager, or person owning 25% or more of the service company, and for each officer, director, manager, or person owning 25% or more of an entity that owns the service company.

d. A list of any actions taken against the applicant in any jurisdiction by a regulatory agency or state attorney general.

4. Application fee. At the time of filing the application, the applicant shall pay the nonrefundable application fee prescribed by A.R.S. § 20-167 and fixed by the Department.

D. ~~Deposit. A service company providing a deposit of cash or alternatives to cash pursuant to A.R.S. § 20-1095.04 shall maintain the deposit in the amount required and such deposit shall not be encumbered. The deposit shall not be released except pursuant to one of the following:~~

1. ~~The service company provides a bond or mechanical reimbursement policy which covers the outstanding service contract liabilities.~~

2. ~~All outstanding service contracts and liabilities thereunder have been assumed by a service company, in good standing, with the approval of the director, acknowledged by the assuming service company's administrator and acknowledged by endorsement by the mechanical reimbursement insurer or surety.~~

3. ~~Evidence satisfactory to the director that:~~

a. ~~All outstanding service contracts and liabilities have expired or been cancelled in accordance with the service contract terms,~~

b. ~~That all claims have been settled,~~

c. ~~That there is no reason to believe there are any unreported claims, and~~

d. ~~That the service company is financially able and agrees to be financially responsible for any valid unreported claims.~~

Term of the service company permit.

1. Term of permit. A service company permit shall have a term that begins on the date that the Department either grants or renews a service company permit and expires at midnight on the last day of the month, three months after the service company's fiscal year-end date.

2. The Department is not required to issue a paper copy of the service company permit. However, the Department will make a copy of the service company permit available by electronic or other means.

3. Expiration of a service company permit.

a. Unless the Department receives an application and full payment of fees for renewal prior to the end of the service company permit term, the service company permit expires.

- b. A service company whose permit term has expired shall not offer, extend, or renew a service contract.
- c. A service company whose permit has expired shall continue to fulfill the obligations of its in-force contracts and shall maintain the security required under A.R.S. § 20-1095.03(3) until such time that all of the service company's contractual obligations to contract holders are fulfilled.

E. ~~The service contract, approval of forms.~~

- 1. ~~Each service company holding a service company permit or applying for such permit shall submit all contract, claim and application forms, brochures and other advertising material to the Director for approval not less than 30 days prior to the proposed effective date thereof. No form, brochure or other printed material may be used until approved by the Director or has been on file with the Director more than 30 days.~~
- 2. ~~No service contract shall be approved unless it contains a provision permitting the cancellation of the contract. The cancellation provision shall provide for a pro-rata refund after deducting for administrative expenses associated with the cancellation. No claim incurred or paid shall be deducted from the amount to be returned. The cancellation provision shall not contain both cancellation penalty and a cancellation fee.~~
- 3. ~~No service contract or application shall be approved unless it:~~
  - a. ~~Is written in nontechnical, readily understood language, using words with common everyday meanings;~~
  - b. ~~Provides for the performance of services within a reasonable period of time of the request for such services by the holder of the contract;~~
  - c. ~~Discloses on the face of the application and the contract:~~
    - i. ~~The name, address and telephone number of the service company;~~
    - ii. ~~The name, address and telephone number of the service contract administrator, if any;~~
    - iii. ~~The name of the individual who sold the service contract.~~
  - d. ~~Clearly, conspicuously and plainly states:~~
    - i. ~~The services to be performed by the service company and the terms and conditions of such performance;~~
    - ii. ~~The service fee or deductible charge, if any, to be charged, or applied, for service calls and/or each covered repair.~~

- ~~iii. Each of the systems, products, appliances and components covered by the contract;~~
  - ~~iv. The period during which the contract will remain in effect;~~
  - ~~v. All limitations respecting the performance of services, including any restrictions as to time periods when services may be required or will be performed;~~
  - ~~vi. The cost of the service contract;~~
  - ~~vii. Those specific items or components which are excluded from coverage in large bold type;~~
  - ~~viii. The conditions, if any, under which the service contract or coverage may be reinstated after coverage has been voided by acts or omissions by the service contract holder;~~
  - ~~ix. The material acts or omissions by the contract holder which cancel or void coverage;~~
4. ~~No service contract shall be approved if:~~
- ~~a. The coverage may be cancelled or voided due to acts or omissions of the service company, its assignees or subcontractors for their failure to provide correct information of their failure to perform the services or repairs provided in a timely, competent, workmanlike manner;~~
  - ~~b. Parts or components repaired or replaced under the service contract are excluded;~~
  - ~~e. The contract can be cancelled or voided by the service company or its representatives for the following reasons including but not limited to:~~
    - ~~i. Pre-existing conditions;~~
    - ~~ii. Prior use or unlawful acts relating to the product;~~
    - ~~iii. Misrepresentation by either the service company or its subcontractors;~~
    - ~~iv. Ineligibility for the program, including gray market, high performance and GM diesel autos.~~

Service company permit renewal and late-renewal.

1. Timely renewal. A service company seeking to renew its permit shall file with the Department a renewal application, consisting of the renewal application form, all required attachments and the renewal fee after the end of its fiscal year but before the expiration of its permit term. A service company shall transmit the renewal application through an electronic online system if such a system is designated on the Department's website. A renewal application must be complete, have all required attachments and the renewal fee to be considered as having been received by the Department.

2. Renewal form. A service company shall use the renewal form designated by the Department. The renewal shall contain the following information:
  - a. Service company name appearing on the permit, and the service company's Arizona license number and EIN;
  - b. Any additions or deletions to the service company's trade name(s), addresses, phone numbers and website addresses;
  - c. Any changes to the service company's contact person(s) or service contract administrator, or their contact information;
  - d. A summary of the applicant's financial position including current assets, current liabilities, equity and income; and
  - e. Any other information the Department deems necessary to aid in the renewal of the permit.
3. Renewal attachments. The service company shall attach the following to the renewal:
  - a. A copy of the service company's financial statement as of the end of the service company's most recently completed fiscal year, sworn to and certified by the owner, duly elected officer or a certified public accountant.
  - b. Evidence of continuing compliance with the financial security requirements of A.R.S. § 20-1095.03(A)(3).
  - c. Any additions or deletions to the officers, directors, LLC managers, or persons owning 25% or more of the service company, or to an entity that owns the service company since the last report to the Department.
  - d. A biographical affidavit, on a form approved by the Department, for each new person identified in subsection (3)(c).
  - e. Any actions taken against the service company in any jurisdiction by a regulatory agency or state attorney general not previously reported to the Department.
4. Renewal fee. At the time of filing the renewal, the service company shall pay a nonrefundable renewal fee as prescribed by A.R.S. § 20-167 and fixed by the Department.
5. Late-renewed application and fee.

- a. Late-renewal period. A service company whose permit term has expired may file a renewal application up to ninety days after the expiration of the permit term. After the ninety-day period, a renewal application will not be accepted by the Department and the service company must file a service company permit application with the Department pursuant to subsection (C) of this Section.
- b. A service company whose permit term has expired shall not offer, extend, or renew a service contract until the permit is renewed or a new permit is issued by the Department.
- c. Fee. In addition to the nonrefundable renewal fee required under subsection (E)(4) of this Section, the service company shall pay a nonrefundable additional fee of \$25 per day starting the calendar day after the permit term expiration and ending on the date the service company files a complete renewal application.
- d. Term of a late-renewed permit. The term of a late-renewed permit shall begin on the date the Department renews the permit and shall end on the last day of the permit term.

~~F. Disapproval of contracts, applications or advertising. The director may disapprove any service contract, application or advertising material that is in violation of this rule by issuing an order specifying in what respect the service contract, application or advertising material violates this rule. Any person aggrieved by such an order can demand a hearing thereon in accordance with A.R.S. § 20-1095.09.~~

Deposits of cash or alternatives to cash.

- 1. Contracts issued, renewed, or extended on or after August 3, 2018. For any contract that a service company issues, extends, or renews from and after August 3, 2018, a service company may not satisfy the financial responsibility requirements of A.R.S. § 20-1095.04 by means of providing a deposit of cash or alternatives to cash.
- 2. Contracts issued, renewed, or extended before August 3, 2018. If a service company provided a deposit of cash or alternatives to cash covering service contracts that were issued, last extended, or last renewed prior to August 3, 2018, the service company shall maintain the deposit in the amount required to cover those contracts and the deposit shall not be encumbered.
- 3. Release of deposits of cash or alternatives to cash. As it relates to financial responsibility requirements fulfilled by a deposit of cash or alternatives to cash, the Director shall only release the deposit upon one of the following:

- a. The service company provides a surety bond or mechanical reimbursement policy that covers the outstanding service contract liabilities secured by the cash or alternatives to cash.
- b. The Department has approved the assumption of outstanding service contracts and liabilities by another service company that has acknowledged the assumption of the outstanding contracts and that shall provide each affected contract holder an endorsement issued by the mechanical reimbursement insurer or surety.
- c. The service company provides evidence satisfactory to the Department that:
  - i. The outstanding service contracts and liabilities have expired or have been cancelled in accordance with the service contract terms;
  - ii. All claims under the service contracts have been settled; and
  - iii. The service company is financially able and agrees to be financially responsible for any valid unreported claims.

**G. ~~Permit expiration; renewal.~~**

- ~~1. Each permit issued pursuant to this rule shall expire at midnight on the last day of the service company's fiscal year. Thereafter, the service company shall have 90 days in which to file its completed renewal application including its certified financial statement and pay the renewal fee of \$100. A permit shall remain in effect upon the service company's timely payment of the renewal fee, timely filing of its annual financial statement and completed renewal application. An incomplete application will not be considered received until it is complete.~~
- ~~2. Any late filing of the renewal application, financial report or late payment of the renewal fee shall be subject to a late fee of \$25 per day. Such late fee shall not release the service company of liability for other violations of these rules or other laws.~~

Filing of forms.

- 1. Contracts to be submitted for approval. A service company shall submit contracts for the Department's approval pursuant to A.R.S. § 20-1095.06. A service company is not required to submit advertisements or marketing materials for approval by the Department but shall abide by the provisions of Title 20, Chapter 2 - Article 6, Chapter 4 - Article 11, and this Section regarding misrepresentations in the sales of service contracts.

2. Requirements for approval. No service contract form shall be approved unless it:
  - a. Complies with A.R.S. § 20-1095.06;
  - b. Identifies the covered products under the contract and, in bold-faced type, preferably in a larger font, the specific items or components of those products which are excluded;
  - c. States the service fee or deductible charge, if any, to be charged, or applied, for service calls and/or each covered repair;
  - d. Specifies in clear and easily understood language the specific circumstances under which a contract holder may engage a subcontractor who is not recommended by the service company without becoming financially responsible under the contract and whether pre-authorization is required prior to engaging a subcontractor who is not recommended by the service company;
  - e. Specifies in clear and easily understood language the service company's financial responsibilities to the contract holder when any of the systems, products or appliances covered by the contract cannot be replaced or repaired;
  - f. If applicable, states the conditions under which the service contract or coverage may be reinstated;
  - g. States the dates of coverage under the service contract including any delay in coverage that differs from the purchase date of the contract which would extend the coverage term of the contract and any terms that govern renewal of the service contract; and
  - h. If providing a pro rata refund upon cancellation of the service contract before the end of the coverage period of the service contract, the service contract shall contain language in conformance with A.R.S. § 20-1095.06(D)(9).
3. Disapproval of contracts. The Department may disapprove any service contract that is in violation of Title 20, Chapter 4 - Article 11, or this subsection (G). The service company may request a hearing to appeal the disapproval pursuant to A.R.S. § 20-161.

**A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement**

**Title 20. Commerce, Financial Institutions and Insurance**

**Chapter 6. Department of Insurance and Financial Institutions**

**– Insurance Division**

**Article 4. Types of Insurance Companies**

**A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.**

In 2018, the Legislature enacted sweeping changes to the service company statutes found at Arizona Revised Statutes ("ARS") §§ 20-1095 through 20-1095.10 ("Service Company Act") (Laws 2018, 2<sup>nd</sup> Reg. Sess., Ch. 150, § 1). Further changes have been enacted since that time (Laws 2021, Ch. 5, §§ 16 - 18 and Laws 2021, Ch. 163, § 1). The Arizona Department of Insurance and Financial Institutions, Insurance Division ("Department") has already expired rule R20-6-408 to reflect the elimination of motor vehicle service contract programs. A.A.C. R20-6-407 requires changes to capture the current statutory requirements enacted in the Service Company Act.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

**A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.**

This regulation applies to Service Companies that are subject A.R.S. §§ 20-1095 through 20-1095.10 and A.A.C. R20-6-407.

**A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:**

- (a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee**

**of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.**

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rule.

**(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.**

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

**(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

The Department anticipates minimal financial impact to service companies including no anticipated effect on revenues or payroll expenditures. The changes to the statutory sections have been in place since 2018 and 2021 which the industry ran with no Department input. Service companies should be well aware of any changes they need to make in order to be compliant with the statutory changes.

In addition, this rulemaking has had a high level of stakeholder involvement with cooperation from the Department to try to reduce the need for new form filings which are costly to service companies. The rule also includes changes to the renewal process that extends term of the permit to 3 months after the end of the service company's fiscal year. This extends the period of time a service company can renew its permit without losing the active status of its permit. This is a benefit which will be newly available to service companies when this rule becomes effective.

**A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.**

The Department does not anticipate any impact on the private employment of Service Companies. Likewise, the Department does not anticipate any impact of public employment in the Department.

**A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:**

- (a) An identification of the small businesses subject to the proposed rulemaking.**
- (b) The administrative and other costs required for compliance with the proposed rulemaking.**
- (c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.**
- (d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

Not applicable. "Small business" is defined as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. A.R.S. § 41-1001(23). The Department does not have information on which service companies may or may not be dominant and how many full-time employees a service company employs. However, based on the financial information submitted to the Department, it does not appear that any of the service companies holding a permit qualify as a small business.

**A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.**

No impact on state revenues is anticipated.

**A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Department worked with stakeholders over an extended period of time (July 30, 2021 through August 19, 2022) to hone the rule. It also conducted 2 Oral Proceedings and 2 additional informal meetings with stakeholders and made changes to the rule based on the comments submitted at those meetings. The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the proposed rulemaking.

**A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

The rule is not based on any data.

## TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

## CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - INSURANCE DIVISION

given effect without the invalid provision or application, and to that end the provisions of this Section are severable.

**Historical Note**

New Section made by final exempt rulemaking at 25 A.A.R. 3715, with an immediate effective date of December 4, 2019 (Supp. 19-4).

**Appendix A. Expired****Table 1. Expired****Table 2. Expired****Table 3. Expired****Table 4. Expired****Table 5. Expired****Table 6. Expired****Historical Note**

Appendix A adopted by final rulemaking at 6 A.A.R. 255, effective January 1, 2000 (Supp. 99-4). Appendix A (including Tables 1 through 6) expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1278, effective September 30, 2006 (Supp. 07-1).

**ARTICLE 4. TYPES OF INSURANCE COMPANIES****R20-6-401. Proxies, Consents, and Authorizations of Domestic Stock Insurers**

A. The Department incorporates by reference National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorization of Domestic Stock Insurers, April 1995 (and no future editions or amendments), which is on file with and available from the Department of Insurance, 100 N. 15th Ave., Suite 102, Phoenix, AZ 85007-2624 and the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197, modified as follows:

Section 1 A is modified to read: "No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or employee of that insurer, or any other person, shall solicit, or permit the use of the person's name to solicit, by mail or otherwise, any proxy, consent, or authorization in respect to any class of equity securities in contravention of this regulation and Schedules A and B, hereby made a part of this regulation."

B. Domestic stock insurance companies shall comply with this Section as required under A.R.S. § 20-143(B).

**Historical Note**

Former General Rule 57-3. R20-6-401 recodified from R4-14-401 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3). New Section made by final rulemaking at 9 A.A.R. 1086, effective March 6, 2003 (Supp. 03-1). Section amended by final expedited rulemaking with an immediate effective date of September 16, 2019 (Supp. 19-3).

**R20-6-402. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Section expired under A.R.S. §

41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Exhibit A. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Exhibit B. Expired****Historical Note**

Former General Rule 69-19. R20-6-402 recodified from R4-14-402 (Supp. 95-1). Exhibit expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**R20-6-403. Expired****Historical Note**

Former General Rule 69-21. R20-6-403 recodified from R4-14-403 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix A. Expired****Historical Note**

R20-6-403, Appendix A recodified from R4-14-403, Appendix A (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix B. Expired****Historical Note**

R20-6-403, Appendix B recodified from R4-14-403, Appendix B (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**Appendix C. Expired****Historical Note**

R20-6-403, Appendix C recodified from R4-14-403, Appendix C (Supp. 95-1). Appendix expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**R20-6-404. Repealed****Historical Note**

Former General Rule 73-31; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-404 recodified from R4-14-404 (Supp. 95-1).

**R20-6-405. Health Care Services Organization**

- A. Authority. This rule is adopted pursuant to A.R.S. §§ 20-142, 20-143, 20-106 and 20-1051 through 20-1068.
- B. Purpose. The purpose of this rule is to implement the legislative intent, as expressed in Chapter 128, Laws of 1973, to regulate and control Health Care Services Organizations in the State of Arizona, (including, but not limited to Certificate of Authority, licensing, fees for licensing, disciplinary procedures for agents and control of solicitation of members and evidences of coverage).
- C. Scope
1. The scope of this Rule is the scope of A.R.S. Title 20 as it relates to Insurers or Hospital or Medical Service Corpo-

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rations. As it relates to Health Care Services Organizations, the scope of this rule is the scope of Title 20, Chapter 1 and Title 20, Chapter 4, Article 9, as provided in A.R.S. § 20-1068. This rule is applicable to agents of persons, and persons operating or proposing to operate Health Care Services Organizations in the State of Arizona.

2. The statutory authority for this rule, A.R.S. Title 20, Chapter 4, Article 9, does not provide for exemptions therefrom for persons or agents of persons subject thereto, and no such exemption is intended or should be presumed by this rule or any provision thereof.
- D.** Repeal. This rule does not repeal any known prior rule, memorandum, bulletin, directive or opinion on this subject matter. If such prior rule or directive exists and is in conflict herewith, the same is repealed hereby.
- E.** Definitions. As used in this rule, unless the context otherwise requires:
1. "Agent" has the meaning of A.R.S. § 20-282.
  2. "Basic Health Care Services" has the meaning of A.R.S. § 20-1051.
  3. "Certificate of Authority" means a Certificate authorizing operation of a Health Care Services Organization.
  4. "Director" means the Director of Insurance of the State of Arizona.
  5. "Enrollee" has the meaning of A.R.S. § 20-1051.
  6. "Evidence of coverage" has the meaning of A.R.S. § 20-1051.
  7. "Health Care Plan" has the meaning of A.R.S. § 20-1051.
  8. "Health Care Services" has the meaning of A.R.S. § 20-1051.
  9. "Health Care Services Organizations" has the meaning of A.R.S. § 20-1051.
  10. "Hospital Service Corporation" has the meaning of A.R.S. § 20-822.
  11. "Insurer" has the meaning of A.R.S. § 20-106(C).
  12. "License" means the authority to act as an agent of a Health Care Services Organization.
  13. "Medical Service Corporation" has the meaning of A.R.S. § 20-822.
  14. "Net charges" means the total of all sums prepaid by or for all enrollees, less approved refunds, adjustments and deductions, as consideration for Health Care Services of a Health Care Plan under an Evidence of Coverage.
  15. "Person" has the meaning of A.R.S. § 20-1051.
  16. "Physician and patient relationship" has the meaning of A.R.S. § 20-833.
  17. "Prepaid Health Plans" means any Health Care Plan to pay or make reimbursement for Health Care Services on a prepaid basis other than insured plans otherwise authorized and approved under A.R.S. Title 20.
  18. "Prepaid Group Practice Plan" means a person authorized and approved under A.R.S. Title 20.
  19. "Provider" has the meaning of A.R.S. § 20-1051.
  20. "Transact" has the meaning of A.R.S. § 20-106(A) and (B).
  21. "Unqualified agent" means a person directly or indirectly representing or acting for a Health Care Services Organization and not qualified as an agent thereof.
- F.** Certificate of Authority
1. Policy. Persons and agents of persons operating Health Care Services Organizations as of May 7, 1973, shall comply with the application requirements of A.R.S. § 20-1052 on or before August 7, 1973.
  2. A Certificate of Authority shall not be granted until the Director is satisfied that the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
  3. An examination of an applicant at the expense of the applicant for a Certificate of Authority may be ordered to be made if the applicant is not a resident, is controlled by a non-resident, or maintains a head or principal office out of its service area, and will be ordered to be made if the applicant contracts with providers, or for services outside a reasonable area, or has contract obligations under its evidence of coverage that are, or appear to be, inequitable or unreasonable as to the enrollees.
- G.** Certificate of Authority – Application
1. A person required to be qualified to do business in this State as a Health Care Services Organization, pursuant to A.R.S. § 20-1052 shall file an application for Certificate of Authority on Department Form E-104.
  2. Applications failing to comply with the requirements of A.R.S. § 20-1053 will be denied without prejudice to the filing of an application complying with such requirements.
  3. Health Care Services Organizations operating in this State as of May 7, 1973, and having submitted a sufficient application for Certificate of Authority as required by this rule, including the disclosure filings of paragraph (7) of this subsection, may continue to operate as an organization until the Director acts upon the application.
  4. The application for Certificate of Authority shall be verified by an authorized and qualified officer of the Health Care Services Organization.
  5. The application for Certificate of Authority shall be accompanied by the fees required for a hospital or medical service corporation by A.R.S. § 20-167 and a tax return or returns on Department Form E-162, for the calendar year previous to the calendar year of application during which the applicant has done business in this State as a Health Care Services Organization, and the amount of tax due thereon after the effective date hereof, if any, as provided by A.R.S. § 20-1060. The filing of such returns or payment of such tax may be adjusted or waived by the Director upon application and affirmative showing in writing therefor justifying the adjustment or waiver.
  6. The Director may, upon written request accompanied by supporting documentation justifying the request, authorize the substitution of public information filed by an applicant under similar statutes or regulations in another state, or under federal requirements, or may waive such information or additional information.
  7. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that biographical information disclosing the past activities, employment and financial transactions or principals, principal officers, controlling persons, and agents of applicant Health Care Services Organizations is necessary for the protection of residents of this State.
  8. Pursuant to the authority of A.R.S. § 20-1053(13), the Director finds that records of fingerprints of principal officers and agents of applicant Health Care Services Organizations may be necessary for the protection of citizens of this state and may be required prior to licensing or approval of a Certificate of Authority.
- H.** Certificate of Authority – Application. The application for Certificate of Authority shall be accompanied by a power of

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attorney as required by A.R.S. § 20-1053(A)(10) on Department Form E-128.

**I. Certificate of Authority – Grounds for denial**

1. Policy. A Certificate of Authority to operate a Health Care Services Organization shall not be granted until the Director is satisfied by the affirmative showing, verified by the applicant, that all of the requirements of A.R.S. §§ 20-1052, 20-1053 and 20-1054 are met and will continue to be met.
2. Guidelines. The guidelines and standards for determination of appropriate mechanisms to achieve an effective Health Care Plan include, but are not limited to the following:
  - a. Ability to provide basic Health Care Services without undue restrictions, limitations, discrimination, unreasonable fee schedules, or unreasonable administrative costs; an affirmative showing that the form of organization does not evidence any coercion, duress or other compulsion over members;
  - b. The form of organization does not lend itself to practices prohibited by A.R.S. §§ 20-441 through 20-459, and
  - c. The evidence of coverage does not contain provisions or statements which are unjust, inequitable, misleading, deceptive or untrue or encourage misrepresentation.
3. Failure to pay obligations. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected if the applicant has failed after 30 days from the entry of final judgment, to pay obligations within the provisions of an evidence of coverage issued by such applicant. The provisions of this Section may be waived by the Director upon a clear affirmative showing that the applicant is defending an action or appealing a judgment at law or equity in a court of this state, or is required to obtain a Certificate of Authority so as to maintain such action.
4. Unauthorized agents. Applications for a Certificate of Authority to operate a Health Care Services Organization may be denied or rejected, after stated cause and opportunity to answer, if the applicant has, 90 days after the effective date, permitted transactions by an unauthorized agent.

**J. Solicitation requirements**

1. Forms for evidences of coverage, advertising matter, sales material and amendments thereto, will not be approved until the Director is satisfied by filing of Department Form P-107 accompanying the filing of such form and the payment of necessary fees, that the requirements of A.R.S. §§ 20-1057, 20-1054(2), and 20-1061 have been met and will continue to be met.
2. Each Health Care Services Organization shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement brochure, form letter of solicitation, evidence of coverage, certificate, agreement or contract, and a copy of all radio and television forms of the above hereafter disseminated in this or any other State with a notation attached to each such solicitation or inducement to indicate the manner and extent of distribution and the date of approval by the Department of such solicitation. Such advertising file shall be maintained for a period of not less than three years.

- K. Annual report.** Each Health Care Services Organization required to file an annual statement, shall, on or before March 1 of each year, file with the Director, together with its annual statement on Department Form E-13, a certificate executed by an authorized officer of the Health Care Services Organization stating that to the best of his knowledge, information and belief, all written solicitations disseminated during the preceding statement year complied or were made to comply with the provisions of Title 20, Chapter 4, Article 9, and this rule, and that no forms of solicitation were disseminated without the prior approval of the Director.

**L. Taxes**

1. All Health Care Services Organizations operating and transacting business in the State of Arizona shall on or before March 1 and with the filing of the Annual Report, file a tax return on Department Form E-162, and pay the tax due on such return pursuant to A.R.S. § 20-1060.
2. A tax return required to be filed and filed with an application for Certificate of Authority may cover a period of time of less than a calendar year as specified in the return and approved by the Director. Annual tax returns required to be filed coincident with the annual report shall be for the full calendar year next preceding the date of filing the annual report.
3. Net charges, as in this rule defined, shall represent the net charges received during the calendar year next preceding the date of filing the annual report and tax return.

**M. Deposit requirements**

1. In the event a Health Care Services Organization determines to maintain statutory deposits by a surety bond, such surety bond shall be in form as approved by the Director guaranteeing the payment of Health Care Services furnished to enrollees, and shall be deposited with the State Treasurer.
2. In the event a Health Care Services Organization determines to maintain the deposit requirements by filing securities with the State Treasurer, a full and complete statement of the securities proposed to be deposited, together with sufficient information to permit a determination of eligibility of such securities shall be filed with the Director on Department Form E-123, and such securities shall not be deposited until such securities are approved by the Director in writing.
3. No securities deposited as herein provided shall be exchanged or substituted for similar securities, except upon the prior written approval of the Director.
4. Health Care Services Organizations claiming to be exempt from the deposit requirement, pursuant to A.R.S. § 20-1055(f) shall submit to the Director an affirmative showing or certification executed by an authorized federal, state or municipal government or political subdivision thereof, demonstrating operational commitments equivalent to the statutory deposit requirements.
5. Statutory deposits shall not be withdrawn or a surety bond cancelled until all contingent and perfected liens, including judgments, debts, and other liabilities for payment of Health Care Services to which the enrollee is entitled under the evidence of coverage shall have been paid and the Director has given his authority in writing to withdraw such deposits or cancel such bonds.

- N. Reserve requirements.** Reserves required by A.R.S. § 20-1056 shall be deposited or maintained as cash, as Certificates of Deposit, or as securities eligible for investment of the capital

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of domestic insurers, pursuant to A.R.S. §§ 20-537 and 20-538.

**O.** Insurers and hospital and medical service corporations – Certificate of Authority

1. Insurers, Hospital Service Corporation, Medical Service Corporations, and Hospital and Medical Service Corporations, holding current Certificates of Authority to do business in this state may organize and operate Health Care Services Organizations jointly or severally without compliance with the deposit and reserve requirements of the statute, if the application contains an affirmative showing that the applicant organization has complied with comparable provisions of Title 20, and is an appropriate mechanism to achieve an effective Health Care Plan.
2. The provisions of statute and this rule applying to Certificates of Authority and Application therefor, shall apply to all insurers, Hospital Service Corporations, Medical Service Corporations, and Hospital and Medical Service Corporations doing business in this state.
3. Organizations claiming exemption or partial exemption pursuant to A.R.S. § 20-1063(c) shall file with the Director simultaneously with the application for Certificate of Authority, a statement affirmatively showing that the applicant has complied with provisions of Title 20 A.R.S. comparable to or more restrictive than the provisions of Title 20, Chapter 4, Article 9, and shall have received the written approval of the Director for such exemption or partial exemption.

**P.** Application, examination and licensing of agents

1. No agent of a Health Care Services Organization shall be eligible for transactions of a Health Care Services Organization, unless, prior to making any solicitation or transaction, he has been appointed agent by a Health Care Services Organization holding a current valid Certificate of Authority and has been licensed as herein provided. Persons directly or indirectly representing or acting for a Health Care Services Organization and not licensed as herein provided, or otherwise qualified under A.R.S. Title 20, shall be an unqualified agent.
2. Any person applying for a license as an agent of a Health Care Services Organization shall do so by filing with the Department of Insurance the following:
  - a. An application for such license on a form approved by the Director of the Department of Insurance;
  - b. The required fees for such license;
  - c. Such additional information as the Director may deem necessary.
3. The licensing of an agent of a Health Care Services Organization shall not become effective until such applicant shall have satisfactorily passed a written examination in accordance with A.R.S. § 20-292 as supplemented by A.R.S. § 20-167.
4. The examination shall be given in such places and at such times as the Director shall from time to time designate.
5. The form of examination and the manual may be altered and amended from time to time, so as to represent a fair test of the applicant's qualifications.
6. Every applicant for license shall satisfactorily complete the examination given with a grade of at least 70%, or such other percentage as may be fixed from time to time by the Director prior to the examination commensurate with the nature of the examination given.
7. License and examination fees shall be in accordance with A.R.S. § 20-167.

8. Report of the results of any examination given pursuant to this rule shall be mailed to the applicant and to the applicant's Health Care Services Organization at the address shown on the application.
9. Except as modified by this rule, the provisions for examination, licensing, annual fees and disciplinary procedures of Chapter 2, Article 3 of Title 20, shall apply.
10. Any agent licensed in this state shall immediately report to the Director any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or other violation affecting his license and all complaints or charges of misconduct lodged with his employer, any public agency of the state, or another state.
11. The Director may reject any application or suspend or revoke, or refuse to renew any agent's license for inducements or statements which are unjust, unfair, inequitable, misleading or deceptive, or which encourage misrepresentation, or are untrue or misleading.
12. The rules, standards and guidelines governing any proceeding relating to the suspension or revocation of the license of a life insurance agent, where applicable, shall also govern any proceedings for suspension or revocation of the license of an agent of a Health Care Services Organization.
13. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.
14. Renewal of a license of an agent shall follow the same procedure as heretofore established for renewal of insurance agents' licenses in this state.

**Q.** Forms

1. The forms prescribed by this rule and the instructions applicable thereto are adopted as requirements of the Director and necessary for the protection of citizens of this state. Such forms, instructions, manuals or examinations are those currently in use, but the same may be amended without reference to this rule and when approved as amended are incorporated in this rule by reference. The form of manual or examination of agents, or any form adopted by the Director may be reproduced for the purpose of reporting or for other purposes.
2. For good cause shown, the Director may authorize the filing of forms and reports on dates other than required by this rule, if applied for in writing not less than 10 days prior to the due date of such report and statement, exhibit, return or accounting.

**R.** Severability. In any provision of this rule or the forms, statements, returns or reports made part of this rule, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions of applications of this rule, which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**S.** Effective date. This rule became effective on the 7th day of May, 1973. Amendments to this rule shall become effective upon filing with the Secretary of State.

**Historical Note**

Former General Rule 73-33; Amended subsections (E), (P), (R), (S), and (T) effective August 12, 1981 (Supp. 81-4). R20-6-405 recodified from R4-14-405 (Supp. 95-1).

**R20-6-406. Expired**

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**Historical Note**

Adopted effective May 18, 1978 (Supp. 78-3). R20-6-406 recodified from R4-14-406 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E), filed in the Office of the Secretary of State August 24, 2000 (Supp. 00-3).

**R20-6-407. Service Companies**

- A.** Scope. This rule shall apply to all service companies except those which are exempt under A.R.S. § 20-1095.02.
- B.** Definitions.
1. "Gray Market" auto means an imported motor vehicle which has not been certified for all safety, emission, and other federal and state standards prior to the arrival of the vehicle into the United States.
  2. "Service" within the meaning of Article 11, Chapter 4, Title 20 includes reimbursement for towing, car rental, lodging or travel breakdown expenses.
  3. The "Contract Holder" means the consumer as defined in A.R.S. § 20-1095(1).
- C.** Application for service company permit.
1. The application for a service company permit under this rule shall be on the form designated by the director which shall contain the following information:
    - a. The name of applicant;
    - b. Arizona address of applicant;
    - c. The home office address of applicant;
    - d. Type of entity (e.g. corporation, partnership);
    - e. Type of equipment to be serviced;
    - f. Fiscal year of applicant;
    - g. A list of suspensions, revocations or other disciplinary or rehabilitative actions against the service company in this or any other jurisdiction. The application form shall be signed under oath and acknowledged by the chief executive officer, chairman of the board of directors, or other person having power of attorney, in which case the power of attorney shall be attached.
  2. The following items shall be attached to the application form and shall complete the application:
    - a. A copy of the service company's most recent financial statement, sworn to and certified by the owner, duly elected officers, or a certified public accountant.
    - b. Evidence of having deposited cash or acceptable securities pursuant to A.R.S. § 20-1095.04.
    - c. Surety bond in lieu of deposit under subparagraph (b) on a form acceptable to the Director.
    - d. Initial nonrefundable permit fee of \$100 with each new application.
    - e. A biographical affidavit, on a form approved by the director, for each officer, director, manager or person owning 25% or more of the service company, and for each officer, director, manager or person owning 25% or more of an entity which owns the service company.
    - f. A copy of the service company's service contract, application, claim forms, brochures, and other forms used in connection with the sale.
- D.** Deposit. A service company providing a deposit of cash or alternatives to cash pursuant to A.R.S. § 20-1095.04 shall maintain the deposit in the amount required and such deposit shall not be encumbered. The deposit shall not be released except pursuant to one of the following:
1. The service company provides a bond or mechanical reimbursement policy which covers the outstanding service contract liabilities.
  2. All outstanding service contracts and liabilities thereunder have been assumed by a service company, in good standing, with the approval of the director, acknowledged by the assuming service company's administrator and acknowledged by endorsement by the mechanical reimbursement insurer or surety.
  3. Evidence satisfactory to the director that:
    - a. All outstanding service contracts and liabilities have expired or been cancelled in accordance with the service contract terms,
    - b. That all claims have been settled,
    - c. That there is no reason to believe there are any unreported claims, and
    - d. That the service company is financially able and agrees to be financially responsible for any valid unreported claims.
- E.** The service contract, approval of forms.
1. Each service company holding a service company permit or applying for such permit shall submit all contract, claim and application forms, brochures and other advertising material to the Director for approval not less than 30 days prior to the proposed effective date thereof. No form, brochure or other printed material may be used until approved by the Director or has been on file with the Director more than 30 days.
  2. No service contract shall be approved unless it contains a provision permitting the cancellation of the contract. The cancellation provision shall provide for a pro rata refund after deducting for administrative expenses associated with the cancellation. No claim incurred or paid shall be deducted from the amount to be returned. The cancellation provision shall not contain both cancellation penalty and a cancellation fee.
  3. No service contract or application shall be approved unless it:
    - a. Is written in nontechnical, readily understood language, using words with common everyday meanings;
    - b. Provides for the performance of services within a reasonable period of time of the request for such services by the holder of the contract;
    - c. Discloses on the face of the application and the contract:
      - i. The name, address and telephone number of the service company;
      - ii. The name, address and telephone number of the service contract administrator, if any;
      - iii. The name of the individual who sold the service contract.
    - d. Clearly, conspicuously and plainly states:
      - i. The services to be performed by the service company and the terms and conditions of such performance;
      - ii. The service fee or deductible charge, if any, to be charged, or applied, for service calls and/or each covered repair.
      - iii. Each of the systems, products, appliances and components covered by the contract;
      - iv. The period during which the contract will remain in effect;

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- v. All limitations respecting the performance of services, including any restrictions as to time periods when services may be required or will be performed;
  - vi. The cost of the service contract;
  - vii. Those specific items or components which are excluded from coverage in large bold type;
  - viii. The conditions, if any, under which the service contract or coverage may be reinstated after coverage has been voided by acts or omissions by the service contract holder;
  - ix. The material acts or omissions by the contract holder which cancel or void coverage;
4. No service contract shall be approved if:
- a. The coverage may be cancelled or voided due to acts or omissions of the service company, its assignees or subcontractors for their failure to provide correct information of their failure to perform the services or repairs provided in a timely, competent, workmanlike manner;
  - b. Parts or components repaired or replaced under the service contract are excluded;
  - c. The contract can be cancelled or voided by the service company or its representatives for the following reasons including but not limited to:
    - i. Pre-existing conditions;
    - ii. Prior use or unlawful acts relating to the product;
    - iii. Misrepresentation by either the service company or its subcontractors;
    - iv. Ineligibility for the program, including gray market, high performance and GM diesel autos.
- F. Disapproval of contracts, applications or advertising. The director may disapprove any service contract, application or advertising material that is in violation of this rule by issuing an order specifying in what respect the service contract, application or advertising material violates this rule. Any person aggrieved by such an order can demand a hearing thereon in accordance with A.R.S. § 20-1095.09.
- G. Permit expiration; renewal.
- 1. Each permit issued pursuant to this rule shall expire at midnight on the last day of the service company's fiscal year. Thereafter, the service company shall have 90 days in which to file its completed renewal application including its certified financial statement and pay the renewal fee of \$100. A permit shall remain in effect upon the service company's timely payment of the renewal fee, timely filing of its annual financial statement and completed renewal application. An incomplete application will not be considered received until it is complete.
  - 2. Any late filing of the renewal application, financial report or late payment of the renewal fee shall be subject to a late fee of \$25 per day. Such late fee shall not release the service company of liability for other violations of these rules or other laws.

**Historical Note**

Adopted effective April 30, 1981 (Supp. 81-2). Former Section R4-14-407 repealed and a new Section R4-14-407 adopted effective July 2, 1987 (Supp. 87-3). R20-6-407 recodified from R4-14-407 (Supp. 95-1).

**R20-6-408. Expired****Historical Note**

Former Section R4-14-408 renumbered as Section R4-14-409; a new Section R4-14-408 adopted effective July 15, 1987 (Supp. 87-3). R20-6-408 recodified from R4-14-408 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 3106, effective October 9, 2018 (Supp. 18-4).

**R20-6-409. Hospital, Medical, Dental, and Optometric Service Corporations**

- A. Applicability. This rule applies to all subscription contracts issued by hospital, medical, dental and optometric service corporations.
- B. Subscription contract provision. Subscription contracts of hospital, medical, dental and optometric service corporations subject to the provisions of Article 3, Chapter 4 of Title 20, A.R.S., shall meet the requirements of the following rules:
1. R20-6-201. Advertisements of disability insurance.
  2. R20-6-209. Unfair sex discrimination.
  3. R20-6-210. Group coverage discontinuance and replacement.
  4. R20-6-213. Unfair discrimination on the basis of blindness, partial blindness, or physical disability.
  5. R20-6-216. Life and disability insurance policy language simplification.
  6. R20-6-302. Valuation of reserves for disability policies.
  7. R20-6-606. Medicare supplement insurance disclosure and minimum standards.
  8. R20-6-607. Reasonableness of benefits in relation to premium charged.
- C. Severability. If any provision of this rule or the application thereof to any person or circumstance is for any reason held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

**Historical Note**

Adopted effective July 9, 1982 (Supp. 82-4). Former Section R4-14-408 renumbered without change as Section R4-14-409 effective July 15, 1987 (Supp. 87-3). R20-6-409 recodified from R4-14-409 (Supp. 95-1).

**ARTICLE 5. THE INSURANCE CONTRACT****R20-6-501. Ten-day Period to Examine Disability Insurance Policy**

For the purpose of implementing A.R.S. §§ 20-442, 20-443, 20-826, 20-1111 and 20-1113 and to make more specific the regulation therein provided relative to policies of individual disability insurance (accident and sickness, hospitalization, medical, surgical and loss of time) issued in the State of Arizona and further to provide satisfactory public remedy against the hazards of misunderstanding by an applicant, of deception and coercion by an agent and of certain policy exclusions and limitations that cheapen the value of coverage, the Insurance Department of Arizona adopts the following rule:

1. Each policy of individual disability insurance, except one for which no provision for renewal is made, issued for delivery in the State of Arizona on or after October 1, 1961, by an insurance company or by a hospital or medical service corporation shall have printed on the first page thereof or attached thereto or endorsed thereupon in prominent style a notice declaring that, during a period of 10 days (or, at the insurer's option, a longer period) from the date of delivery to the policyholder, such policy may be returned for cancellation to the insurer at its home

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office (or, at the insurer's option, to its branch office or to the agent through whom it was purchased) and declaring further that in the event of such return the insurer will refund the entirety of any premium paid therefor, including any policy fees or other charges, and that the policy shall be deemed void from the beginning and that the par-

ties shall be returned to their original position as if no policy had been issued.

2. The Insurance Department does not specify the particular language the notice shall contain but prefers usage of a phraseology approximately along the lines of either the longer (Form A) or shorter (Form B) sample below:

**Sample Form A****NOTICE OF TEN-DAY RIGHT TO EXAMINE POLICY**

The \_\_\_\_\_ Insurance Company urges you to read this policy carefully and trusts that upon doing so you will fully understand, and will be pleased with, its coverage. If, however, questions arise or information is desired, do not hesitate to consult the selling agent. In addition, should the policy for any reason be unsatisfactory, by surrendering it within ten days following receipt to our office at \_\_\_\_\_ or to the selling agent, immediately full premium will be refunded and the policy will be cancelled and deemed void and as never in force and effect.

**Sample Form B****IMPORTANT NOTICE**

If for any reason this policy is unsatisfactory, it may be returned for cancellation within ten days following receipt – in which case the entire premium will be refunded.

**Historical Note**

Former General Rule 61-7. R20-6-501 recodified from R4-14-501 (Supp. 95-1).

**ARTICLE 6. TYPES OF INSURANCE CONTRACTS****R20-6-601. Regulations Governing Bail Transactions****A. General provisions**

1. Effective date
  - a. These regulations are effective November 1, 1960. On and after date, no bail transaction or severable portion thereof shall be conducted, directly or indirectly except in full conformity herewith.
  - b. No surety insurer shall furnish for use and no bail bond agent shall use any forms or documents which contain any provisions contrary to these regulations on or after the effective date hereof.
2. Authority. Authority for these regulations is A.R.S. §§ 20-142, 20-143 and 20-257 and A.R.S. Chapter 2, Article 3.
3. Public interest served. These regulations serve the public interest by prohibiting inequities in bail transactions and by establishing standards of licensing and conduct for bail bond agents.
4. Regulations as severable. These regulations shall be construed as severable, such that, where one or more Sections are held invalid, such remaining Sections will not be adversely affected.
5. Penalty. Violation of these regulations will subject the guilty party to the penalties of A.R.S. §§ 20-114, 20-220 and 20-316 and to the enforcement procedures of A.R.S. §§ 20-152 and 20-160 through 20-166.

**B. Definitions**

1. "Bail transaction" defined. As used in these regulations, the term "bail transaction" includes solicitation and inducement, preliminary negotiation and effectuation of a contract of surety insurance and the transaction of matters subsequent thereto and arising therefrom – all in connection with the release of persons arrested or confined.
2. "Bail bond agent" defined. As used in these regulations, the term "bail bond agent" means any person who engages in a bail transaction on behalf of a surety insurer or representative thereof.

3. "Arrestee" defined. As used in these regulations, the term "arrestee" means any person arrested or detained whose release on bail is solicited or procured or concerning whose release negotiations are commenced.
4. "Director" defined. As used in these regulations, the term "Director" means the Director of Insurance of the state.

**C. Licensing**

1. Application for license. Each application for original or renewal license as a bail bond agent shall be on a form furnished by the Director, and each applicant for such license shall furnish such supplementary information and supporting statements as the Director may require.
2. Prohibited associations. A bail bond license shall not be issued to, renewed for or maintained by any person who associates regularly with criminals, gamblers or persons of poor repute – except to the extent such association is required by business or professional duty and responsibility.
3. Transactions by unlicensed persons prohibited. No bail bond agent shall directly or indirectly permit any person on his behalf to solicit or negotiate bail transactions unless such person is duly licensed by the Director.
4. Employees. Employees of bail bond agents performing only clerical duties need not be licensed hereunder and shall be deemed not engaged in bail transactions.

**D. Conduct of bail bond agents**

1. Disclosure of business. Every bail bond agent shall conduct his business in such a manner that the public and those dealing with him shall be aware of the capacity in which he is acting.
2. Control of employees. A bail bond agent shall exercise direct supervision over his employees and keep informed of their actions as his employees.
3. Prohibited employees. No bail bond agent shall have in his employ at any time any criminal, gambler or person of poor repute.
4. Acting for attorney. No bail bond agent shall receive, or collect for an attorney any money or other item of value

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for attorney's fee, costs or any other purpose on behalf of an arrestee, unless a receipt is given therefor.

5. Informants prohibited. No bail bond agent shall for any purpose, directly or indirectly, enter into an arrangement of any kind or have an understanding with a law enforcement officer, with a newspaper employee, with a messenger service or employee thereof, with a trusty in a jail, with other person incarcerated in a jail, or with any person whatever, to inform or notify any bail bond agent directly or indirectly of:
    - a. The existence of a criminal complaint;
    - b. The fact of an arrest; or
    - c. The fact that an arrest of any person is pending or contemplated; or
    - d. Any information pertaining to matters set forth in (a), (b), and (c) hereof or to the persons involved therewith.
  6. Compliance with rules of public authority. No bail bond agent shall solicit any person in a bail transaction in a prison or jail or other place of detention, court or public institution connected with the administration of justice unless said bail bond agent has fully complied with every rule, regulation and ordinance issued by each public authority governing the conduct of persons in or about said premises.
  7. Representations to public authority
    - a. No bail bond agent shall make any misleading or untrue representation to a court or to a public official with respect to a bail transaction, nor for the purpose of avoiding or preventing a forfeiture of bail or of having set aside a forfeiture which has occurred.
    - b. Every bail bond agent shall truthfully and fully answer every question asked him by the Director or his representative respecting his bail transactions and matters relating to the conduct of his bail business. Any bail bond agent may have his attorney present when he answers any such question.
  8. Maintenance of records. Every bail bond agent shall keep complete records of all business done under authority of his license. Such records shall be open to inspection or examination by the Director or his representatives at all reasonable times at the principal place of business of the bail bond agent as designated in his license.
- E. Charges, collateral, refunds and rebates**
1. Rates
    - a. No bail bond agent shall issue or deliver a bail bond except at the premium rates most recently filed and approved by the Director in accordance with A.R.S. § 20-357.
    - b. Every bail bond agent shall post the premium rates of the surety insurer he represents in a conspicuous manner at his place of business.
  2. Charges permitted. No bail bond agent shall, in any bail transaction or in connection therewith, directly or indirectly, charge or collect money or other valuable consideration from any person except for the following purposes:
    - a. To pay the premium at the rates established by the surety insurer and approved by the Director.
    - b. To provide collateral.
    - c. To reimburse himself for actual and reasonable expenses incurred in connection with the individual bail transaction, including:
      - i. Guard fees after the first 12 hours following release of an arrestee on bail;
      - ii. Notary fees, recording fees, necessary long distance telephone expenses, telegram charges, and travel expenses for other than local community travel.
      - iii. Any other actual expenditure necessary to the bail transaction which is not usually and customarily incurred in connection with the ordinary operation and conduct of bail transactions.
3. Delivery of documents to arrestee
    - a. Every bail bond agent shall, at the time of obtaining the release of an arrestee on bail or immediately thereafter, deliver to such arrestee or to the principal person with whom negotiations were made, if other than the arrestee, a copy of the bail bond premium agreement, which shall include:
      - i. The name of the surety insurer and the name and business address of the bail bond agent.
      - ii. The amount of bail and the premium thereof.
    - b. The bail bond agent shall also deliver at such time a statement detailing all charges in addition to the premium, the amount received on account, the unpaid balance if any, and a description of and a receipt for any collateral received.
  4. Collateral
    - a. Any bail bond agent who receives collateral in connection with a bail transaction shall do so in a fiduciary capacity and, prior to any forfeiture of bail, shall keep such collateral separate and apart from any other funds, assets or property of such bail bond agent.
    - b. Any collateral received shall be returned to the person who deposited it with the bail bond agent or any assignee as soon as the obligation, the satisfaction of which was secured by the collateral, is discharged. Where such collateral has been deposited to secure the obligation of a bond, it shall be returned immediately upon the entry of any order by an authorized official by virtue of which liability under the bond is terminated, or, if any bail bond agent fails to cooperate fully with any authorized official to secure the termination of such liability, immediately upon the accrual of any right to secure an order of termination of liability.
    - c. When such collateral has been deposited as security for unpaid premium or charges and, if such premium or charges remained unpaid at the time of exoneration and after demand therefor has thereafter been made by the bail bond agent, collateral other than cash may be levied upon in the manner provided by law and cash collateral up to the amount of such unpaid premium on charges may be applied in payment thereof.
    - d. If collateral received by a bail bond agent is in excess of the bail forfeited, such excess shall be returned to the depositor immediately upon application of the collateral to the forfeiture subject, however, to any claim of the bail bond agent for unpaid premium or charges as provided in subparagraph (c) of paragraph (4) of subsection (E), or as agreed to in writing by the bail bond agent and arrestee or his indemnitor.

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5. Premium refund upon surrender of arrestee. No bail bond agent shall surrender an arrestee to custody prior to the time specified in the bail bond for the appearance of the arrestee, or prior to any other occasion when the presence of the arrestee in court is lawfully required, without returning all premium paid therefor, unless as a result of judicial action, or material misrepresentation by the arrestee or his indemnitor with respect to the execution of the bail bond agreement, or a material and substantial increase in the hazard assumed. Failure of the arrestee to pay the premium, or charges permitted under these regulations or any part thereof, and failure to furnish collateral required by the bail bond agent, shall not be considered a material and substantial increase in the hazard assumed.
6. Rebating prohibited. No bail bond agent shall pay or allow in any manner, directly or indirectly, to any person who is not also a bail bond agent any commission or valuable consideration on or in connection with a bail transaction. This Section shall not prohibit payments by a bail bond agent to an unlicensed person of charges by such persons for services of the kind specified in paragraph (2) subsection (E) of this Section.

**Historical Note**

Former General Rule 60-5. R20-6-601 recodified from R4-14-601 (Supp. 95-1).

**R20-6-602. Nationwide Inland Marine Definition**

- A. Applicability. This rule applies to risks and coverages which may be classified or identified as Marine, Inland Marine or Transportation insurance but shall not be construed to mean that the kinds of risks and coverages are solely Marine, Inland Marine or Transportation insurance in all instances. This rule shall not be construed to restrict or limit in any way the exercise of any insuring powers granted under charters and license whether used separately, in combination or otherwise.
- B. Marine and/or transportation policies may cover under the following conditions:
  1. Imports.
    - a. Imports may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.
    - b. An import, as a proper subject of marine or transportation insurance, shall be deemed to maintain its character as such so long as the property remains segregated in such a way that it can be identified and has not become incorporated and mixed with the general mass of property in the United States, and shall be deemed to have been completed when such property has been:
      - i. Sold and delivered by the importer, factor or consignee; or
      - ii. Removed from place of storage and placed on sale as part of the importer's stock in trade at a point of sale or distribution; or
      - iii. Delivered for manufacture, processing or change in form to premises of the importer or of another for any such purposes.
  2. Exports.
    - a. Exports may be covered wherever the property may be located without restriction as to time, provided the coverage of each issuing company includes hazards of transportation.
    - b. An export, as a proper subject of marine or transportation insurance, shall be deemed to acquire its character as such when designated or while being prepared for export and retain that character unless diverted for domestic trade, and when so diverted, the provisions of this rule respecting domestic shipments shall apply, provided, however, that this provision shall not apply to long established methods of insuring certain commodities, e.g., cotton.
3. Domestic shipments.
  - a. Domestic shipments on consignment, for sale or distribution, exhibit, or trial, or approval or auction, while in transit, while in the custody of others and while being returned, provided the coverage of each issuing company includes hazards of transportation, and further provided that in no event shall the policy cover domestic shipments on consignment on premises owned, leased or operated by the consignor.
  - b. Domestic shipments not on consignment, provided the coverage of the issuing companies includes hazards of transportation, beginning and ending within the United States, and further provided that such shipments shall not be covered at manufacturing premises nor after arrival at premises owned, leased or operated by assured or purchaser.
4. Bridges, tunnels and other instrumentalities of transportation and communication excluding buildings, their improvements and betterments, their furniture and furnishings, fixed contents and supplies held in storage. The foregoing includes:
  - a. Bridges, tunnels, other similar instrumentalities, including auxiliary facilities and equipment attendant thereto.
  - b. Piers, wharves, docks, slips, dry docks and marine railways.
  - c. Pipelines, including on-line propulsion, regulating and other equipment appurtenant to such pipelines, but excluding all property at manufacturing, producing, refining, converting, treating or conditioning plants.
  - d. Power transmission and telephone and telegraph lines, excluding all property at generating, converting or transforming stations, substations and exchanges.
  - e. Radio and television communication equipment in use as such including towers and antennae with auxiliary equipment, and appurtenant electrical operating and control apparatus.
  - f. Outdoor cranes, loading bridges and similar equipment used to load, unload and transport.
5. Personal Property Floater Risks covering individuals and/or generally
  - a. Personal Effects Floater Policies
  - b. The Personal Property Floater
  - c. Government Service Floater
  - d. Personal Fur Floaters
  - e. Personal Jewelry Floaters
  - f. Wedding Present Floaters for not exceeding 90 days after the date of the wedding.
  - g. Silverware Floaters.
  - h. Fine Arts Floaters, covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit.

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- i. Stamp and Coin Floaters.
- j. Musical Instrument Floaters. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
- k. Mobile Articles, Machinery and Equipment Floaters, excluding vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use, covering identified property of a mobile or floating nature pertaining to or usual to a household. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
- l. Installment Sales and Leased Property Policies covering property pertaining to a household and sold under conditional contract of sale, partial payment contract or installment sales contract or leased, but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest.
- m. Live Animal Floaters.
- 6. Commercial Property Floater Risks covering property pertaining to a business, profession or occupation.
  - a. Radium Floaters.
  - b. Physicians' and Surgeons Instrument Floaters. Such policies may include coverage of such furniture, fixtures and tenant assured's interest in such improvements and betterments of buildings as are located in that portion of the premises occupied by the assured in the practice of his profession.
  - c. Pattern and Die Floaters.
  - d. Theatrical Floaters, excluding buildings and their improvements and betterments, and furniture and fixtures that do not travel about with theatrical troupes.
  - e. Film Floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records.
  - f. Salesmen's Samples Floaters.
  - g. Exhibition Policies on property while on exhibition and in transit to or from such exhibitions.
  - h. Live Animal Floaters.
  - i. Builders Risks and/or Installation Risks covering interest of owner, seller or contractor, against loss or damage to machinery, equipment, building materials or supplies, being used with and during the course of installation, testing, building, renovating or repairing. Such policies may cover at points or places where work is being performed, while in transit and during temporary storage or deposit, of property designated for and awaiting specific installation, building, renovating or repairing.
    - i. Such coverage shall be limited to Builders Risks or Installation Risks where Perils in addition to Fire and Extended Coverage are to be insured.
    - ii. If written for account of owner, the coverage shall cease upon completion and acceptance thereof; or if written for account of a seller or contractor the coverage shall terminate when the interest of the seller or contractor ceases.
  - j. Mobile Articles, Machinery and Equipment Floaters, excluding motor vehicles designed for highway use and auto homes, trailers and semi-trailers except when hauled by tractors not designed for highway use and snow plows constructed exclusively for highway use covering identified property of a mobile or floating nature, not on sale or consignment, or in course of manufacture, which has come into the custody or control of parties who intend to use such property for the purpose for which it was manufactured or created. Such policies shall not cover furniture and fixtures not customarily used away from premises where such property is usually kept.
  - k. Property in transit to and from and in custody of bailees not owned, controlled or operated by the bailor. Such policies shall not cover bailee's property at his premises.
  - l. Installment sales and leased property. Policies covering property sold under conditional contract of sale, partial payment contract, installment sales contract, or leased but excluding motor vehicles designed for highway use. Such policies must cover in transit but shall not extend beyond the termination of the seller's or lessor's interest. This Section is not intended to include machinery and equipment under certain "lease-back" contracts.
  - m. Garment Contractors Floaters.
  - n. Furriers or Fur Storer's Customer's Policies, i.e., policies under which certificates or receipt are issued by furriers or fur storer's covering specified articles the property of customers.
  - o. Accounts Receivable Policies, Valuable Papers and Records Policies.
  - p. Floor Plan Policies, covering property for sale while in possession of dealers under a Floor Plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:
    - i. Such merchandise is specifically identifiable as encumbered to the bank or lending institution.
    - ii. The dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution.
    - iii. That such policies cover in transit and do not extend beyond the termination of the dealer's interest.
    - iv. That such policies shall not cover automobiles or motor vehicles; merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.
  - q. Sign and Street Clock Policies, including neon signs, automatic or mechanical signs, street clocks, while in use as such.
  - r. Fine Arts Policies covering paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value or artistic merit, for account of museums, galleries, universities, businesses, municipalities and other similar interests.
  - s. Policies covering personal property which, when sold to the ultimate purchaser, may be covered spe-

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cifically, by the owner, under Inland Marine Policies including:

- i. Musical Instrument Dealers Policies, covering property consisting principally of musical instruments and their accessories. Radios, televisions, record players and combinations thereof are not deemed musical instruments.
- ii. Camera Dealers Policies, covering property consisting principally of cameras and their accessories.
- iii. Furrier's Dealers Policies, covering property consisting principally of furs and fur garments.
- iv. Equipment Dealers Policies, covering mobile equipment consisting of binders, reapers, tractors, harvesters, harrows, tedders and other similar agricultural equipment and accessories therefor; construction equipment consisting of bulldozers, road scrapers, tractors, compressors, pneumatic tools, and similar equipment and accessories therefor; but excluding motor vehicles designed for highway use.
- v. Stamp and Coin Dealers covering property of philatelic and numismatic nature.
- vi. Jewelers' Block Policies.
- vii. Fine Arts Dealers.

Such policies may include coverage of money in locked safes or vaults on the Assured's premises. Such policies also may include coverage of furniture, fixtures, tools, machinery, patterns, molds, dies and tenant insureds interest in improvements of buildings.

- t. Wool Growers Floaters.
- u. Domestic Bulk Liquids Policies, covering tanks and domestic bulk liquids stored therein.
- v. Difference in Conditions Coverage excluding fire and extended coverage perils.
- w. Electronic Data Processing Policies.

**C. Unless otherwise permitted, nothing in the foregoing shall be construed to permit MARINE OR TRANSPORTATION POLICIES TO COVER:**

1. Storage of assured's merchandise, except as hereinbefore provided.
2. Merchandise in course of manufacture, the property of and on the premises of the manufacturer.
3. Furniture and fixtures and improvements and betterments to buildings.
4. Monies and/or securities in safes, vaults, safety deposit vaults, bank or assured's premises, except while in course of transportation.

**Historical Note**

Former General Rule 59-4; Amended effective August 30, 1985 (Supp. 85-4). R20-6-602 recodified from R4-14-602 (Supp. 95-1).

**R20-6-603. Repealed**

**Historical Note**

Former General Rule 69-18; Repealed effective July 27, 1981 (Supp. 81-4). R20-6-603 recodified from R4-14-603 (Supp. 95-1).

**R20-6-604. Definitions**

The definitions in A.R.S. § 20-1603 and this Section apply to R20-6-604 through R20-6-604.10.

"Actual loss ratio" means incurred claims divided by earned premiums at rates in use.

"Actuarially equivalent" means of equal actuarial present value determined as of a given date with each value based on the same set of actuarial assumptions. When used in this Article in reference to rates and coverage, "actuarially equivalent" means a rate or coverage that is actuarially determined to yield loss ratios of 50% for credit life insurance and 60% for credit disability insurance.

"Credit insurance" means credit life insurance, credit disability insurance, or both, but does not include any insurance for which there is no identifiable charge.

"Earned premiums" means earned premiums at prima facie rates and earned premiums at rates in use.

"Earned premiums at prima facie rates" means an insurer's actual earned premiums, adjusted to the amount that the insurer would have earned if the insurer's premium rates had equaled the prima facie rates in effect during the experience period.

"Earned premiums at rates in use" means the premiums that an insurer actually earns on the premium rates the insurer charges during an experience period.

"Evidence of individual insurability" means information about a debtor's health status or medical history that a debtor provides as a condition of credit insurance becoming effective.

"Experience" means an insurer's earned premiums and incurred claims during an experience period.

"Experience period" means a period of time for which an insurer reports income and expense information on the insurer's credit insurance business.

"Final adjusted rates" means the prima facie rates referred to in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08.

"Gross debt" means the sum of the remaining payments that a debtor owes a creditor.

"Identifiable charge" means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor's status as insured or noninsured.

"Incurred claims" means the total claims an insurer pays during an experience period, adjusted for the change in the claim reserves.

"Net debt" means the amount necessary to liquidate a debt in a single lump-sum payment excluding unearned interest and other unearned finance charges.

"Plan of credit insurance" means an insurance plan based on one of the following rate and coverage categories:

Credit life insurance, other than on revolving accounts, including joint and single life coverage, decreasing and level insurance, and outstanding balance and single premium;

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Credit life insurance on revolving accounts;

Credit life insurance on an age-graded basis;

Credit disability insurance, other than on revolving accounts, including outstanding balance and single premium, and each combination of waiting period and retroactive or non-retroactive benefits;

Credit disability insurance on revolving accounts, including each combination of waiting period and retroactive or non-retroactive benefits.

“Preexisting condition” means a condition:

For which a debtor received medical advice, consultation, or treatment within six months before the effective date of credit insurance coverage; and

From which the debtor dies, in the case of life insurance, or becomes disabled, in the case of disability insurance, within six months after the effective date of coverage.

“Prima facie adjusted loss ratio” means incurred claims divided by earned premiums at prima facie rates.

“Prima facie rates” means the rates established by the Director as prescribed in R20-6-604.03.

“Reasonableness standard” means the requirement in A.R.S. § 20-1610(B) that an insurer’s premiums for credit insurance shall not be excessive in relation to the benefits provided under the policy.

“Rule of Anticipation” means the product of the gross single premium per \$100 of indebtedness for a debtor’s remaining term of indebtedness, times the number of hundreds of dollars of remaining indebtedness.

#### Historical Note

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### Exhibit A. Repealed

#### Historical Note

Former General Rule 70-22; Correction, original publication did not include Exhibit C (Supp. 76-1). Amended effective January 8, 1980 (Supp. 80-1). Former Section R4-14-604 repealed, new Section R4-14-604 adopted effective April 1, 1982. See subsection (N) for further detail (Supp. 82-2). Amended subsection (N) and Exhibit A effective March 30, 1983 (Supp. 83-2). R20-6-604 recodified from R4-14-604 (Supp. 95-1). Section repealed by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

#### R20-6-604.01. Rights and Treatment of Debtors

##### A. Creditor Obligations.

- Multiple plans of insurance. If a creditor makes more than one plan of credit insurance available to debtors, the creditor shall inform each debtor of each plan for which

the debtor is eligible and of the premium and charges for each plan.

- Substitution. If a creditor requires a debtor to have credit insurance as additional security for a debt, the creditor shall inform the debtor in writing of the debtor’s right to obtain alternative coverage as prescribed in A.R.S. § 20-1614 before the loan transaction is completed.
- Remittance of premiums. If a creditor adds an insurance charge or premium to a debt, the creditor shall remit the insurance charge or premium to the insurer within 60 days after it is added to the debt.

##### B. Creditor and insurer obligations regarding insurance on refinanced debt.

- If a debt is discharged because the debtor refinances the debt before the scheduled maturity date, the creditor shall notify the insurer that issued the credit insurance on the discharged debt.
- An insurer shall not issue any credit insurance that covers the refinanced debt with an effective date preceding the termination date of the insurance on the original debt.
- The insurer issuing the coverage on the discharged debt shall refund to or credit the debtor with all unearned insurance charges or premium according to R20-6-604.06.
- If a debt is refinanced, the effective date of the policy provisions in any new insurance covering the refinanced debt shall be the first date on which the debtor became insured under the previous policy. An insurer may apply any new exclusion period or preexisting condition limitation only to the portion of the new loan that exceeds the previous loan.

##### C. Required policy provisions.

- Termination provisions for group policies. A group credit insurance policy shall provide for continued coverage of debtors covered under the policy if the policy terminates, as follows:
  - For a policy with a single premium payment, or any other payment method that prepays coverage for more than one month, a provision requiring continued insurance coverage for the entire period for which the premium has been paid; and
  - For a policy with a monthly premium payment, a provision requiring the insurer to send the debtor a termination notice at least 30 days before the effective date of termination, unless an insurer is issuing replacement coverage in at least the same amount, without lapse of coverage.
- Maximum aggregate provisions. A provision in an individual policy or group certificate that sets a maximum limit on total claim payments shall apply only to that individual policy or group certificate.

##### D. Creditor and insurer obligations when debtor prepays debt.

- Except as provided in subsection (D)(2), if a debtor prepays a debt in full, any credit insurance covering the debt shall terminate on the date of prepayment. The creditor and insurer shall refund to or credit the debtor with any unearned premium according to R20-6-604.06.
- If a debt is fully prepaid because of the debtor’s death or any other lump-sum credit insurance payment, a creditor or insurer is not required to refund premium for the coverage under which the lump sum was paid.
- If a claim under credit disability coverage is in progress at the time of prepayment, the insurer:

## TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

## CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - INSURANCE DIVISION

- a. May calculate the refund as if the prepayment did not occur until the end of the period for payment of benefits, and
  - b. Is not required to refund premiums for any period for which credit disability benefits are payable.
- E.** Benefits payable on revolving account. If a debtor is paying for credit insurance coverage on a revolving account and dies, the insurer shall pay a benefit amount equal to the amount of indebtedness outstanding on the date of death. The insurer may exclude preexisting conditions occurring within six months of any advance on the revolving account, running separately for each advance or charge.
- 2. Any other person who sends the Director a written request for notice of proceedings to adjust the prima facie rates.
- D.** Any person may submit written comments to the Director or appear at the hearing and provide oral comments on the record. Written comments shall be received no later than the close of record date specified in the notice of hearing.
- E.** The Director shall:
- 1. Consider written and oral comments; and
  - 2. Issue a final order setting prima facie rates no later than 30 days after the close of record date specified in the notice of hearing.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.02. Satisfying the Reasonableness Standard**

- A.** An insurer shall comply with all requirements of A.R.S. § 20-1610 regarding premium and insurance charges.
- B.** An insurer may satisfy the reasonableness standard in A.R.S. § 20-1610(B) if the insurer's premium rate develops a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.
- C.** While in effect, the rates described in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08 are conclusively presumed to develop the loss ratios described in subsection (B). For purposes of prospective effect, the Department may rebut this presumption by disapproving or withdrawing approval for the rates as prescribed in A.R.S. § 20-1610.
- D.** An insurer may provide coverage other than the standard coverage described in R20-6-604.04 and R20-6-604.05. An insurer that wishes to provide nonstandard coverage shall:
  - 1. File the nonstandard coverage policy information as prescribed in A.R.S. § 20-1609, and
  - 2. Demonstrate that the rates for the coverage are reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.03. Determination of Prima Facie Rates**

- A.** The Director shall, by order, establish prima facie rates as prescribed in this Section.
- B.** At least once every three years, the Director shall:
  - 1. Determine the rate of expected claims on a statewide basis;
  - 2. Compare the rate of expected claims with the rate of actual claims for the past three years determined from the incurred claims and earned premiums at prima facie rates; and
  - 3. If the Director determines that the prima facie rates require adjustment, issue a notice of hearing and proposed order adjusting the actual statewide prima facie rates. The hearing date on the proposed order shall be no earlier than 45 days from the date of the notice.
- C.** The Director shall mail a copy of the notice and proposed order to:
  - 1. Each insurer that reported transaction of credit insurance on its annual statement immediately preceding the date of the notice, and

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.04. Credit Life Insurance Rates and Provisions**

- A.** Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit life insurance.
- B.** The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.
- C.** A credit life insurance policy shall meet the requirements listed in this Section. The policy shall:
  - 1. Provide coverage for death, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of being eligible;
  - 2. Have no exclusions other than for:
    - a. Suicide within six months after the effective date of coverage, or
    - b. A preexisting condition;
  - 3. Have no age restrictions, except the following permissible exclusions:
    - a. An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 70 and that all insurance shall terminate on a debtor attaining age 70; and
    - b. An age restriction for a revolving credit life insurance policy that:
      - i. Excludes a class of debtors determined by age, or
      - ii. Provides for termination of insurance or reduction in the amount of insurance when a debtor reaches age 70; and
  - 4. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.05. Credit Disability Insurance Rates and Provisions**

- A.** Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit disability insurance.

## TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

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- B.** The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.
- C.** A credit disability insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for disability, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of becoming eligible;
  2. Include a definition of disability that is no more restrictive than the following:
    - a. For the first 12 months of disability, the inability of the insured to perform the essential functions of the insured's occupation; and
    - b. After the first 12 months of disability, the inability of the insured to perform the essential functions of any occupation for which the insured is reasonably suited by virtue of education, training, or experience;
  3. Not include any employment requirement that a debtor be employed more than full-time on the effective date of coverage, with a definition of "full-time" as a regular work week of at least 30 hours;
  4. Have no exclusions other than for disabilities resulting from:
    - a. Normal pregnancy,
    - b. Intentionally self-inflicted injury, or
    - c. A preexisting condition;
  5. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge;
  6. Have no age restrictions, except the following permissible exclusion:  
An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 65 and that all insurance shall terminate on a debtor attaining age 66; and
  7. Include a provision for a daily benefit of not less than one-thirtieth of the monthly benefit payable under the policy.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.06. Refund Methods**

- A.** When refunding premiums as prescribed in A.R.S. § 20-1611, an insurer shall use the following methods:
1. For insurance paid by a single premium, the Rule of Anticipation method; and
  2. For insurance paid by other than a single premium, a method that refunds at least the pro rata gross unearned amount charged to the debtor.
- B.** The Director may approve other refund methods similar to those described in subsection (A), that are actuarially equivalent to the type of coverage the debtor purchased.
- C.** An insurer's refund method may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.
- D.** An insurer is not required to refund any amount less than \$5.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.07. Experience Reports**

- A.** By April 1 of each year, an insurer that transacts credit insurance in this state shall file with the Director an experience report, on a form specified by the Director, for each class of business that the insurer transacts as provided in this Section.
1. In this Section, a "class of business" means:
    - a. Credit unions;
    - b. Banks, savings and loan institutions, and mortgage companies;
    - c. Finance companies, small loan companies, and consumer lenders defined in A.R.S. § 6-601(5);
    - d. Dealers, including auto, truck, and boat dealers, retail stores, and other persons selling financed goods; and
    - e. All other persons selling credit insurance not specifically listed in subsection (A)(1)(a) through (d).
  2. The report shall include the following information:
    - a. Mode of premium payment,
    - b. Plan of benefits description,
    - c. Earned premiums,
    - d. Incurred claims,
    - e. Loss ratios, and
    - f. For credit life insurance, mean insurance in force.
- B.** For each day a report is late, the Director may assess a penalty as prescribed in A.R.S. § 20-223.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2725, effective June 7, 2002 (Supp. 02-2).

**R20-6-604.08. Use of Prima Facie Rates; Rate Deviations**

- A.** Use of rates greater than prima facie rates. An insurer may file for approval and use of any deviated rates that are higher than the prima facie rates referred to in R20-6-604.04 and R20-6-604.05 as prescribed in A.R.S. § 20-1610.
1. The deviated rates shall meet the minimum loss ratio standards and other requirements prescribed by R20-6-604.02.
  2. The filing shall specify the accounts to which the rates apply.
  3. The rates may be:
    - a. Applied uniformly to all accounts of the insurer; or
    - b. Applied on an equitable basis approved by the Director to accounts of the insurer for which the insurer's experience has been less favorable than expected.
- B.** Approval period of deviated rates. An insurer may use a deviated rate for the same period of time as the experience period used to establish the rate, not to exceed a period of three years from the date of approval. An insurer may file for a new deviated rate before the end of the approval period, but not more often than once in any 12 month period.
- C.** Approval is non-transferable. The Director's approval of a deviated rate is not transferable to another insurer. If an insurer acquires an account for which another insurer obtained a deviated rate, the successor insurer may not charge the deviated rate without obtaining approval for the deviated rate as prescribed in subsection (B).
- D.** Use of rates lower than filed rates. An insurer may use a rate that is less than its filed rate without notice to the Director.

Authorizing Statute: A.R.S. § 20-143

20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

Implementing Statute: A.R.S. § 20-1095.01(C)

20-1095.01. Service companies; permits; rules; application of laws

A. A service company may not offer or issue a service contract unless the service company has qualified for and been issued a permit by the director.

B. Except for the registration requirements in this article applicable to service companies, service companies and related service contract sellers, administrators and other persons that market, sell or offer to sell service contracts are exempt from any licensing requirements of this title as a result of activities related to the marketing, selling or offering of service contracts.

C. The director shall adopt rules that provide for the application for permit, renewal procedures, fees, refund of the unearned portion of the contract price and approval of forms. Service companies are subject to chapter 1 of this title, except section 20-116, and this article.

D. A provider shall provide a consumer with a specimen copy of the service contract terms and conditions prior to the time of sale upon a request by the consumer. A provider may comply with this provision by providing the consumer with a complete sample copy of the terms and conditions or by directing the consumer to a website containing a complete sample of the terms and conditions of the service contract.

**C-4**

**ARIZONA DEPARTMENT OF AGRICULTURE**

Title 3, Chapter 7 (Weights and Measures Division)

**Amend:** R3-7-101, R3-7-103, R3-7-104, R3-7-108, R3-7-109, R3-7-110, Article 1 Table 1, R3-7-201, R3-7-203, R3-7-302, R3-7-402, R3-7-501, R3-7-502, R3-7-503, R3-7-504, R3-7-505, R3-7-506, R3-7-507, R3-7-601, R3-7-602, R3-7-603, R3-7-604, R3-7-701, R3-7-702, R3-7-703, R3-7-704, R3-7-705, R3-7-707, R3-7-708, R3-7-710, R3-7-712, R3-7-713, R3-7-715, R3-7-716, R3-7-717, R3-7-718, R3-7-749, R3-7-750, R3-7-751, R3-7-752, R3-7-753, R3-7-754, R3-7-755, R3-7-756, R3-7-757, R3-7-759, Table A, R3-7-760, R3-7-761, R3-7-762, R3-7-1001, R3-7-1002, R3-7-1003, R3-7-1004, R3-7-1005, R3-7-1006, R3-7-1007, R3-7-1008, R3-7-1009, R3-7-1010, R3-7-1012, R3-7-1013

**Repeal:** R3-7-204, R3-7-605, R3-7-714, Table 1, Table 2, R3-7-901, R3-7-902, R3-7-903, R3-7-904, R3-7-905, R3-7-906, R3-7-907, R3-7-908, R3-7-909, R3-7-910, R3-7-911, R3-7-912, R3-7-913



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** October 21, 2022

**SUBJECT: ARIZONA DEPARTMENT OF AGRICULTURE**  
Title 3, Chapter 7 (Weights and Measures Division)

**Amend:** R3-7-101, R3-7-103, R3-7-104, R3-7-108, R3-7-109, R3-7-110, Article 1 Table 1, R3-7-201, R3-7-203, R3-7-302, R3-7-402, R3-7-501, R3-7-502, R3-7-503, R3-7-504, R3-7-505, R3-7-506, R3-7-507, R3-7-601, R3-7-602, R3-7-603, R3-7-604, R3-7-701, R3-7-702, R3-7-703, R3-7-704, R3-7-705, R3-7-707, R3-7-708, R3-7-710, R3-7-712, R3-7-713, R3-7-715, R3-7-716, R3-7-717, R3-7-718, R3-7-749, R3-7-750, R3-7-751, R3-7-752, R3-7-753, R3-7-754, R3-7-755, R3-7-756, R3-7-757, R3-7-759, Table A, R3-7-760, R3-7-761, R3-7-762, R3-7-1001, R3-7-1002, R3-7-1003, R3-7-1004, R3-7-1005, R3-7-1006, R3-7-1007, R3-7-1008, R3-7-1009, R3-7-1010, R3-7-1012, R3-7-1013

**Repeal:** R3-7-204, R3-7-605, R3-7-714, Table 1, Table 2, R3-7-901, R3-7-902, R3-7-903, R3-7-904, R3-7-905, R3-7-906, R3-7-907, R3-7-908, R3-7-909, R3-7-910, R3-7-911, R3-7-912, R3-7-913

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### Summary:

This regular rulemaking from the Arizona Department of Agriculture (Department) seeks to amend sixty (60) rules, one (1) table, and repeal sixteen (16) rules and two (2) tables from Title 3, Chapter 7 Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 related to the Weights and Measures Division. Specifically, the Department seeks to streamline and clarify Clean Burning Gasoline reporting requirements; incorporate the California Air Resources Board Static Torque Test

procedure; incorporate the most recent version of the National Institute of Standards and Technology Handbooks to bring Arizona up to the current national standards for commercial weighing and measuring devices, the method of sale of commodities, commodity packaging and labeling requirements, and motor fuel sampling methods; and finally to complete the proposed course of action from the five year review report that was approved by Council on January 4, 2022.

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

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

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

The Department indicates that this rulemaking does not establish a new fee or contain a fee increase.

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

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

4. **Summary of the agency's economic impact analysis:**

The Department indicates they have revised the rules to clarify many areas regulating commercial devices, weighmaster requirements, fuel quality, and vapor recovery. The Department licenses over 120,000 commercial devices at over 12,500 locations, in addition to individual licenses issued to 2,585 weighmasters, 29 vapor service representatives, 144 registered service agencies, 511 registered service representatives, as well as other regulated entities. The Department states that businesses that are impacted vary from small business to large corporations. Stakeholders include the Department motor fuel suppliers, retailers, and consumers.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department indicates that they consulted with stakeholders to evaluate the rules in an effort to reduce the regulatory burden while continuing protections for consumers and air quality. As such, the Department believes they have chosen the least intrusive and costly methods

6. **What are the economic impacts on stakeholders?**

The Department believes that in all cases, the changes to this rule are being implemented to have the least impact on business operations, while continuing to protect air quality and equity in the marketplace. The Department does not expect the rulemaking to have a significant impact

on small business or on public or private employment. The Department believe that all businesses regulated by the Department will benefit from rules that are simplified and have improved clarity and consistency.

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

The Department indicates between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking, that R3-7-708(D)(2) was modified as an editorial change to a comment from Western States Petroleum Association to reflect when the 1 psi vapor pressure waiver is permitted by the USEPA in the summer outside of the Arizona CBG area. Council staff does not believe this change constitutes a substantially different rule pursuant to A.R.S. § 41-1025.

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

The Department indicates that it received twenty-two (22) written comments from James Verburg of the Western States Petroleum Association (WSPA), Craig Willis of the Eco-Energy Fueling Solutions (Eco-Energy), Amanda Gray of the Arizona Petroleum Marketers Association (APMA), R. Brooke Coleman of the Advanced Biofuels Business Council (ABBC), Gene Harrington of Biotechnology Innovation Organization (Bio), and Matthew Hayni of POET. The Department amended R3-7-708(D)(2) pursuant to a comment from WSPA to reflect when the 1 psi vapor pressure waiver is permitted by the USEPA as indicated in subsection 7 of this memo. A summary of all other comments as well as the Department's responses are included in the final materials for the Council's reference. The original comments can be disbursed to the Council at the Council's request. The Department indicates no comments were made by persons who attended oral proceedings on August 30, 2022.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that it requires permits for commercial devices, public weighmasters, registered service agencies and representatives, and the authority to construct gasoline vapor recovery systems. General permits are issued for all of these classifications except commercial devices. General permits are not issued for commercial devices for the following reasons:

- Commercial device licenses are specifically authorized under A.R.S. § 3-3451;
- Under A.R.S. § 3-3451(C), each commercial device is licensed separately;
- Each commercial device has an individual license fee as provided under A.R.S. § 3-3452(A), and these fees vary based on the type of device;
- A licensee may hold multiple licenses for one or more commercial device of the same type, or multiple licenses for a combination of different types of commercial devices;

- Each licensee operates commercial devices at different types of facilities (e.g. fuel station vs. grocery store), and these devices may be used for varying business activities and practices;
- The inspection approach and regulatory requirements for each licensee varies based on the type and quantity of devices that they operate, as well as the nature of their business;
- A general permit for a commercial device license is not technically feasible and would not meet the requirements of A.R.S. § 3-3451.

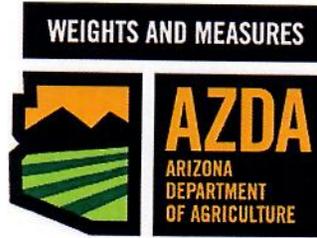
**10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department indicates that this rulemaking is consistent with federal law.

**11. Conclusion**

This regular rulemaking from the Arizona Department of Agriculture seeks to amend sixty (60) rules and two (2) tables and repeal sixteen (16) rules and two (2) tables from Title 3, Chapter 7 Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 related to Weights and Measures Division. The Department indicates these rules are being updated to streamline and clarify processes, incorporate procedures and handbooks to bring Arizona to the current national standards, and to complete the proposed course of action from the five year review report approved by Council on January 4, 2022. The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

DOUGLAS A. DUCEY  
Governor



MARK W. KILLIAN  
Director

# Arizona Department of Agriculture

Weights and Measures Services Division  
1110 W. Washington Street, Suite 450, Phoenix, Arizona 85007  
State Metrology Laboratory: 4425 W. Olive Avenue, Glendale, AZ 85302  
(602) 542-4373 FAX: (623) 939-8586

October 18, 2022

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Request for Approval and Cover Letter  
Notice of Final Rulemaking for A.A.C. Title 3, Chapter 7**

Dear Ms. Sornsin:

Pursuant to A.A.C. R1-6-201, the Arizona Department of Agriculture hereby submits the attached Notice of Final Rulemaking to amend the rules contained in Title 3, Chapter 7 and related documents and requests approval of the same.

The Department requests that the rulemaking be placed on the Council's December 6, 2022 meeting agenda. In accordance with Executive Order 2022-01 the Department received approval of the rulemaking from the Office of the Governor on February 24, 2022 and October 17, 2022.

In accordance with A.A.C. R1-6-201, the Department provides the following additional information:

- a. Close of record date: August 30, 2022.
- b. Relation of the rulemaking to a five-year review report: The latest five-year rule review report was completed January 4, 2022. This rulemaking completes the proposed course of action noted in the Five-Year Review Report.
- c. Whether the rule establishes a new fee: No.
- d. Whether the rule contains a fee increase: No.
- e. Immediate effective date: The Department does not request an immediate effective date.

- f. Certification regarding studies: The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules.
- g. Certification regarding employees: No new employees are needed to implement or enforce the rule.
- h. Documents enclosed and provided electronically:
  - 1. This request for approval and cover letter;
  - 2. Notice of Final Rulemaking;
  - 3. Economic, small business, and consumer impact statement;
  - 4. Public comments related to rulemaking.
  - 5. Material incorporated by reference;
  - 6. General and specific statutes authorizing the rule;
  - 7. The existing rules;
  - 8. Emails approving rulemaking from Governor's Office per Executive Order 2022-01, dated February 24, 2022 and October 17, 2022;

In addition, no person has submitted an analysis to the Department that compares the rule's impact on the competitiveness of businesses in this state to the competitiveness of businesses in other states.

Please contact Kevin Allen at (480) 848-1709 or [kallen@azda.gov](mailto:kallen@azda.gov) with any questions.

Sincerely,



Mark Killian

mk:cm

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 7. DEPARTMENT OF AGRICULTURE  
WEIGHTS AND MEASURES SERVICES DIVISION

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R3-7-101	Amend
R3-7-103	Amend
R3-7-104	Amend
R3-7-108	Amend
R3-7-109	Amend
R3-7-110	Amend
Table 1	Amend
R3-7-201	Amend
R3-7-203	Amend
R3-7-204	Repeal
R3-7-302	Amend
R3-7-402	Amend
R3-7-501	Amend
R3-7-502	Amend
R3-7-503	Amend
R3-7-504	Amend
R3-7-505	Amend
R3-7-506	Amend
R3-7-507	Amend
R3-7-601	Amend
R3-7-602	Amend
R3-7-603	Amend
R3-7-604	Amend
R3-7-605	Repeal
R3-7-701	Amend
R3-7-702	Amend
R3-7-703	Amend
R3-7-704	Amend
R3-7-705	Amend
R3-7-707	Amend
R3-7-708	Amend
R3-7-710	Amend
R3-7-712	Amend
R3-7-713	Amend
R3-7-714	Repeal
R3-7-715	Amend
R3-7-716	Amend
R3-7-717	Amend
R3-7-718	Amend
R3-7-749	Amend
R3-7-750	Amend
R3-7-751	Amend

R3-7-752	Amend
R3-7-753	Amend
R3-7-754	Amend
R3-7-755	Amend
R3-7-756	Amend
R3-7-757	Amend
R3-7-759	Amend
Table A	Amend
R3-7-760	Amend
R3-7-761	Amend
R3-7-762	Amend
Table 1	Repeal
Table 2	Repeal
R3-7-901	Repeal
R3-7-902	Repeal
R3-7-903	Repeal
R3-7-904	Repeal
R3-7-905	Repeal
R3-7-906	Repeal
R3-7-907	Repeal
R3-7-908	Repeal
R3-7-909	Repeal
R3-7-910	Repeal
R3-7-911	Repeal
R3-7-912	Repeal
R3-7-913	Repeal
R3-7-1001	Amend
R3-7-1002	Amend
R3-7-1003	Amend
R3-7-1004	Amend
R3-7-1005	Amend
R3-7-1006	Amend
R3-7-1007	Amend
R3-7-1008	Amend
R3-7-1009	Amend
R3-7-1010	Amend
R3-7-1012	Amend
R3-7-1013	Amend

**2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 3-107, 3-3414

Implementing statutes: A.R.S. §§ 3-3413 to 3-3416; 3-3431; 3-3433 to 3-3434; 3-3452 to 3-3454; 3-3471 to 3-3473; 3-3475; 3-3491; 3-3493 to 3-3494; 3-3498; and 3-3512 to 3-3514

**3. The effective date of the rule:**

- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable.

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable.

**4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 28 A.A.R. 1771

Notice of Proposed Rulemaking: 28 A.A.R. 1683

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Kevin Allen, Associate Director

Address: Arizona Department of Agriculture  
Weights and Measures Services Division  
1802 W. Jackson St., #78  
Phoenix, AZ 85007

Telephone: (480) 848-1709

Email: kallen@azda.gov

Website: agriculture.az.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The proposed amendments to the rule seek to accomplish the following:

- Act on a proposal submitted by industry stakeholders to promote additional economic opportunities in Arizona by amending Article 7 to allow E15 motor fuel as an additional motor fuel option available to consumers within the Cleaner Burning Gasoline area ("CBG-covered area").
- In consultation with the Arizona Department of Environmental Quality ("ADEQ"), establish standards in Article 7 for the blending and certification of E15 motor fuel intended for sale within the CBG-covered area to ensure compliance with emissions reduction performance requirements that are part of a federal State Implementation Plan.
- Streamline and clarify CBG certification and reporting requirements in Article 7 to reduce the burden of the CBG program on regulated parties while continuing to uphold the program's benefits to air quality.
- Repeal Article 9 since stage II vapor recovery systems have been decommissioned effective September 30, 2018 and are prohibited under A.R.S. § 3-3512(K).
- Incorporate the California Air Resources Board ("CARB") TP-201.1B Static Torque Test procedure for new and modified stage I vapor recovery installations and as an annual stage I vapor recovery test requirement to help safeguard the performance of components that are designed to prevent gasoline vapor leaks when they are installed at the proper torque setting.
- Repeal unnecessary enforcement actions in Article 1 since maximum enforcement actions are already dictated by statute.
- Repeal redundant requirements in Article 2 for commercial devices as these requirements already exist in NIST Handbook 44 as applied under A.R.S. § 3-3413.
- Repeal unnecessary requirements in Article 6 for third-party registered service agencies, as these requirements are already enforced under the authority of the Arizona Registrar of Contractors and the Industrial Commission of Arizona.
- Adopt the most recent editions of the National Institute of Standards and Technology Handbooks bring Arizona up to the current national standards for commercial weighing and measuring devices, the method of sale of commodities, commodity packaging and labeling requirements, and motor fuel sampling methods.
- Simplify the overall organization of the rule and improve clarity and consistency to ensure that our rules are easy to read and understand and aligned with our statutes.
- Complete the proposed course of action noted in the recent Five-Year Review Report for Title 3, Chapter 7.

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

Not applicable

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

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The rule will allow, but not mandate, the sale of gasoline with 15 percent ethanol (E15) in the CBG-covered area. E15 motor fuel is currently allowed in Arizona outside of the CBG-covered area. Gasoline suppliers, retailers, and consumers may benefit from availability of increased motor fuel choices. Since the sale of E15 motor fuel is a marketing decision, there are no mandatory costs; however, gasoline retailers that decide to sell this type of gasoline may incur costs to comply with the rules and to ensure that their gasoline storage tank systems and dispensers are compatible with E15 motor fuel.

There are many changes in the rule that reduce regulatory burden and improve clarity, which will increase the ease of understanding and compliance for the regulated community, while continuing protections for consumers and air quality.

Lastly, the proposed rules also include an update to require testing of swivel adaptors at new or modified stage I vapor recovery sites and on an annual basis for existing sites. This test is designed to verify that equipment is operating properly to protect air quality. The cost of this test is minimal and will be required for any gasoline stations that operate with a stage I vapor recovery system equipped with swivel adaptors. Vapor recovery registered service agencies and the Department will have minimal costs associated with procuring the necessary equipment for the test and training to conduct the test.

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

A.A.C. R3-7-708(D)(2) was modified as an editorial change in response to comment #6, as shown below:

**D. Special provisions for gasoline-ethanol blends.**

1. Gasoline-ethanol blends shall meet ASTM D4814, except as provided in subsection (D)(2) or (D)(3).
2. The maximum vapor pressure for gasoline blended with fuel ethanol may exceed the vapor pressure requirements outlined in ASTM D4814 by no more than 1.0 psi (referred to as the 1.0 psi waiver) for the following gasoline-ethanol blends:
  - a. Outside of the CBG-covered area if the concentration of ethanol, excluding the required denaturing agent, is at least 9% by volume and no more than the maximum concentration of ethanol ~~as allowed by~~ that is allowed for the 1.0 psi waiver to apply under federal law;

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

An oral proceeding was held on August 30, 2022 at 10:00 a.m. at the Arizona Department of Agriculture, 1110 West Washington Street, Suite 450, Phoenix, Arizona 85007. No verbal comments were received during the hearing. There were six written comments received by the following organizations, which are summarized below with the Department's response to each comment.

Western States Petroleum Association (WSPA), James Verburg  
Eco-Energy Fueling Solutions (Eco-Energy), Craig Willis  
Arizona Petroleum Marketers Association (APMA), Amanda Gray  
Advanced Biofuels Business Council (ABBC), R. Brooke Coleman  
Biotechnology Innovation Organization (Bio), Gene Harrington  
POET, Matthew Haynie

1	<p><b>Comment:</b> We support proposals to simplify the regulations, including removing the compliance averaging option, carbon monoxide label, rules related to stage II vapor recovery.</p> <p><b>Commenter(s):</b> WSPA</p> <p><b>Response:</b> Thank you for your comment.</p>
2	<p><b>Comment:</b> WSPA is concerned that WMSD is moving forward with rulemaking without the foundational statutory changes to Arizona Revised Statute 3-3493.A.2 and Arizona Revised Statute 3-3493.B.1. Fuel certification is a clear example. For Type 2 Standards (AZCBG Certification with the CARB Predictive Model), the CARB Predictive Model Phase 2 and even the CARB Predictive Model Phase 3 fuel emission models are no longer representative of the current fleet of vehicles circulating on the road today. Furthermore, the emissions cannot even be calculated with the CARB Predictive Model Phase 2 for 15% ethanol blends and with the CARB Predictive Model Phase 3 for 15% ethanol blends. WSPA suggests that WMSD reconsider the current certification process of AZCBG (including the associated statutory language), in particular for wintertime blends, and develop a new process consistent with current data on fuel/vehicle emissions.</p> <p><b>Commenter(s):</b> WSPA</p> <p><b>Response:</b> The Weights and Measures Services Division (“WMSD”) disagrees that statutory changes are needed to implement the updates in the proposed rule. As described below, Arizona statutes have required more ethanol than was allowed in California since the requirements for wintertime gasoline to meet CARB Phase 2 standards were established in 1998. Additionally, the same statutes that require a minimum ethanol content of 10 volume percent allow a “maximum percentage of oxygen allowed by provisions of waiver issued or other limits established by the United States environmental protection agency,” which is currently 15 volume percent ethanol.</p> <p>A.R.S. §3-3493(A)(1) and (A)(2) outline two fuel reformulation options for summertime gasoline. The option provided in subsection (A)(2) requires fuel formulations to meet <i>“California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.”</i></p> <p>The requirements for this summer formulation were enacted in 1997 under SB 2307. At that time, the summer formulation of gasoline did not require addition of oxygenates, and that is still the case in current statutes.</p> <p>A.R.S. §3-3494(B) provides the fuel formulation requirement for wintertime gasoline. The paragraph states the gasoline, <i>“... shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in 3-3433, subsections D and F. The fuel described in this subsection shall meet the requirements of section 3-3492, subsection A, paragraph 1.”</i></p> <p>The requirement mandating CARB phase 2 reformulated gasoline during the wintertime was enacted in 1998 under HB 2347, in § 41-2124(B). When enacted, the Arizona reformulated gasoline was required to be certified with 10 volume percent ethanol per A.R.S. § 41-2123, subsection A, paragraph 2, which read (underline added for emphasis):</p> <p><u>“All unleaded gasoline which is supplied or sold by any person and which is intended as a final product for the fueling of motor vehicles within area A or which is consumed in a motor vehicle in area A by a fleet owner shall, for a gasoline-ethanol blend, contain not less than ten percent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.”</u></p>

	<p>Therefore, in 1998, the legislature made it clear that even though the CARB Phase 2 requirements did not allow a fuel formulation with 10% ethanol, in Arizona our statutes required a minimum of 10% ethanol and a “maximum percentage of oxygen allowed by the provisions of a waiver issued or other limits established by the United States environmental protection agency.” At that time, the maximum percentage of ethanol allowed by the provisions of an EPA waiver was 10 volume percent (44 FR 68, April 6, 1979). In 2010 and 2011, EPA issued waivers that allowed up to 15% ethanol for certain model vehicles (75 FR 68094, November 4, 2010 and 76 FR 4662, January 26, 2011).</p> <p>Because the CARB regulations limited the maximum oxygen content to 2.7 percent by weight, with a requirement for producers and importers to certify the gasoline with an oxygen content between 1.8 and 2.2 percent by weight, the CBG rules were structured to certify the gasoline with an oxygen content of 2.0 weight percent (corresponding to approximately 5.6 volume percent ethanol), as required to certify gasoline with the CARB predictive model. Following certification, the final gasoline is blended to the 10 volume percent as required by Arizona statute for sale in Arizona (see A.A.C. R3-7-751(J)). In order to accommodate blending of up to 15% ethanol as provided under the EPA waiver, this same logic was followed to allow the new maximum allowable ethanol content per EPA waivers. Additionally, the proposed rules follow recent amendments to federal rules that allow a process to ‘recertify’ gasoline to add 15% ethanol to gasoline previously certified for 10% ethanol (see 85FR 78412, December 4, 2020, 40 CFR §1090.740).</p>
3	<p><b>Comment:</b> WSPA has concerns whether E15 could be permitted within Arizona Revised Statutes 3-3493 for California Phase 2 Reformulated Gasoline. The USEPA has permitted the use of E15 with the Federal Phase II Reformulated Gasoline and has procedures for utilizing the Federal Complex Model to certify Type 1 Arizona CBG under that emissions model. An equivalent mechanism has not been established by the California Air Resources Board (CARB) for Phase 2 Reformulated Gasoline. While CARB has been petitioned to permit E15 into the Phase 3 Reformulated Gasoline Model that permission has not been granted nor is it clear how those procedures could be extended to the Phase 2 Predictive Model. Since E15 is outside of the scope of the CARB Phase 2 and the associated predictive model, it could not be offered as a fuel within the AZCBG covered area without a statutory change.</p> <p><b>Commenter(s):</b> WSPA</p> <p><b>Response:</b> See response to comment #2.</p>
4	<p><b>Comment:</b> If E15 was permitted without a statutory change, WSPA suggests that WMSD assess whether USEPA would accept CARB Phase 2 gasoline with E15 as representing a new boutique fuel.</p> <p><b>Commenter(s):</b> WSPA</p> <p><b>Response:</b> In accordance with the Energy Policy Act of 2005, EPA publishes a list of boutique fuels, which is maintained at <a href="https://www.epa.gov/gasoline-standards/state-fuels">https://www.epa.gov/gasoline-standards/state-fuels</a>. Per the list, Arizona has two boutique fuels, Arizona Cleaner Burning Gasoline, summer and non-summer. EPA made it clear during the development of the boutique fuels list that because oxygenated fuel blends are specifically authorized under the Clean Air Act (“CAA”) section 211(m), they are not preempted by CAA 211(c)(4) and therefore not subject to the boutique fuels restrictions in CAA 211(c)(4)(v). See 71 FR 78192, 78197 (December 28, 2006). An ethanol blend of 15 percent therefore would not represent a new boutique fuel.</p> <p>In addition, because E15 is allowable on a federal level, and Arizona is not prescribing and enforcing the use of E15 for the purpose of motor vehicle emission control, the authorization to use up to 15 percent ethanol does not create a new fuel that must be added to the boutique fuels list. See 71 FR at 78194 (identification of fuel types is “based on the required specific fuel components, specifications, or limits of each fuel type”). Allowing the use of E15 in addition to E10 will not create “fuel islands” or result in fuel supply shortages during events such as hurricanes. See 71 FR at 78193-94. Thus, even if CAA 211(c)(4) applied to oxygenate specifications, its boutique fuels restrictions would not apply to the authorization of E15 within the CBG program.</p>
5	<p><b>Comment:</b> The statutory requirement that AZCBG meets the Federal Complex Model in the summer or CARB Phase 2 limits/CARB Phase 2 Predictive Model throughout the year, also needs to be reviewed for parties downstream that introduce components other than what was designated by the fuel supplier. This would apply to</p>

	<p>oxygenate blenders that add additional oxygenate or blenders that introduce fuel components that were not previously certified to meet AZCBG or AZRBOB requirements.</p> <p>EPA’s approach relative to oxygenate blenders in 40 CFR 1090 may not be able to be applied in the same way for Arizona CBG since USEPA RFG certification no longer requires the use of a model to determine compliance. Furthermore, the use of Ethanol Flex Fuel that was blended using gasoline that was not certified to meet AZCBG should not be permitted to be classified as an oxygenate blend and should be required to adhere to the requirements of a registered supplier. This mirrors the USEPA approach relative to natural gas liquids or other components that were not previously certified for sulfur, benzene, and vapor pressure requirements.</p> <p><b>Commenter(s):</b> WSPA</p> <p><b>Response:</b> As stated, registered suppliers may certify CBG using the complex model, predictive model, or by complying with Type 2 standards during the summer, and must comply with either predictive model or type 2 standards during the winter. A.R.S. § 3-3492(A)(1) requires a minimum ethanol content during the winter of ten percent by volume and a maximum percentage of oxygen “allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.” Since 2011, the EPA allows gasoline to contain up to 15 percent ethanol; therefore, A.R.S. § 3-3492(A)(2) allows the use of gasoline with up to 15 percent ethanol. As is explained in response #2, and as has been done with the predictive model for almost 25 years, the proposed rule continues to allow the certification of CBG using the complex model with a 1.8 to 2.2 weight percent oxygen content, and then <u>allows</u> the addition of ethanol following certification (it should be noted that it is mandatory to add 10 volume percent ethanol following certification when using the predictive model during the winter). This methodology permits the use of both the complex model and predictive model for certification, while still accommodating the addition of oxygenates per statute to meet either voluntary or required oxygenate standards. The methodology for ‘downstream recertification’ of the CBG to add the additional 5% ethanol follows the process that was developed by EPA and incorporated into federal rules in 2020 (see 40 CFR 1090.740, 85 FR 78412, December 4, 2020).</p> <p>While A.R.S. § 3-3493(A)(1) and (A)(2) set the standards for certification of CBG with the use of the predictive model or complex model, as stated previously, there has been precedent to allow the addition of oxygenates following certification to comply with the oxygenate standards in A.R.S. § 3-3492 since the inception of the CBG program. That, combined with the new procedures outlined by EPA in 40 CFR 1090.740 allowing recertification of gasoline, we are confident that we are following state and federal law. We do not believe there is a difference with respect to the certification using the complex model or certification to a flat standard as outlined in 40 CFR 1090 since both methods are aimed to provide standards to protect air quality, and the CBG program has flat RVP standards that are applicable in addition to the complex model (A.R.S. § 3-3433(D) and (F)).</p> <p>Lastly, the use of ethanol flex fuel to provide the oxygenate for blending E15 is allowed on a federal level. Ethanol flex fuel (“EFF”) is certified to meet standards in ASTM D5798 and in the CBG area, must additionally meet a 7.0 Reid vapor pressure. In 2017, WMSD updated A.A.C. R3-7-718(C) to remove requirements for ethanol flex fuel sold or offered for sale within the CBG-covered area to use a base gasoline that is not certified as CBG as long as vapor pressure and standards for fuel ethanol are met. We contend that since EFF is allowable in the CBG area and CBG E10 is allowable in the CBG area, that the addition of EFF to CBG E10 would be allowable.</p>
6	<p><b>Comment:</b> R3-7-708.D.2 – Gasoline Oxygenate Blends. Pursuant to Special Provisions for gasoline Ethanol Blends, the language surrounding the 1 psi waiver in R3-7-708.D.2 needs to be updated to reflect when the 1 psi vapor pressure waiver is permitted by the USEPA in the summer outside of the Arizona CBG area. The current language could be interpreted to mean that the 1 psi waiver would be permitted for all gasoline ethanol blends permitted by the USEPA rather than only those gasoline ethanol blends that the USEPA has granted the 1 psi waiver. Alternative wording is provided below that makes this clarification and maintains alignment with federal requirements as they evolve:</p>

	<p><i>“R3-7-708 D.2.a Outside of the CBG-covered area if the concentration of ethanol, excluding the required denaturing agent, is at least nine percent by volume and no more than the maximum concentration of ethanol that is granted the 1.0 psi waiver as allowed by federal law.”</i></p> <p><b>Commenter(s):</b> WSPA</p> <p><b>Response:</b> R3-7-708(D)(2) has been updated as follows:  (2) The maximum vapor pressure for gasoline blended with fuel ethanol may exceed the vapor pressure requirements outlined in ASTM D4814 by no more than 1.0 psi (<u>referred to as the 1.0 psi waiver</u>) for the following gasoline-ethanol blends:  (a) Outside of the CBG-covered area if the concentration of ethanol, excluding the required denaturing agent, is at least 9% by volume and no more than the maximum concentration of ethanol <del>as allowed by</del> <u>that is allowed for the 1.0 psi waiver to apply under</u> federal law.</p>
7	<p><b>Comment:</b> R3-7-751.G - Arizona CBG Requirements. The 2.0% minimum by weight is irrelevant if the gasoline is blended with 10% ethanol as the weight % oxygen will be around 3.5% (and around 5.2% if the gasoline is blended with 15% ethanol). Furthermore, the certification process with the CARB Predictive Model calculates the same emissions if the fuel blend has +/- 0.2 oxygen weight % centered around the 2.0 oxygen weight %.</p> <p><b>Commenter(s):</b> WSPA</p> <p><b>Response:</b> As discussed in response #2, the option to use the PM to certify CBG dates back to 1998. Because AZCBG requires a minimum of 10 volume percent ethanol and the PM used to certify gasoline requires an oxygen content of 1.8 to 2.2 percent by weight, the rules require certification of CBG with the oxygenate concentration as required under the PM. The proposed changes clarify the standards in the PM that require the oxygen content to be between 1.8 and 2.2 percent by weight when certifying under the flat limits.</p>
8	<p><b>Comment:</b> We support the WMSD’s decision to allow E15.</p> <p><b>Commenter(s):</b> Eco-Energy, ABBC, Bio, POET</p> <p><b>Response:</b> Thank you for your comments.</p>
9	<p><b>Comment:</b> The commenters who support the use of E15 included in their comments detailed references to supporting documentation regarding the benefits and studies related to E15. The benefits and studies outlined by one or more of the commenters include:</p> <ul style="list-style-type: none"> <li>● EPA approval</li> <li>● Gasoline tank system compatibility with E15</li> <li>● Product and insurance liability</li> <li>● Alignment with the majority of U.S. states</li> <li>● Successful vehicle miles traveled using E15</li> <li>● Addition of supply to tight gasoline markets</li> <li>● Reduction of pump prices</li> <li>● Consumer choice</li> <li>● Consumer cost savings</li> <li>● Reduction of tailpipe emissions, lifecycle carbon emissions, and greenhouse gases</li> </ul> <p>Copies of the comment letters and referenced studies may be found at:  <a href="https://agriculture.az.gov/calendar/wmsd-proposed-rulemaking-oral-proceeding">https://agriculture.az.gov/calendar/wmsd-proposed-rulemaking-oral-proceeding</a>.</p> <p><b>Commenter(s):</b> Eco-Energy, ABBC, Bio, POET</p> <p><b>Response:</b> Thank you for your comments.</p>
10	<p><b>Comment:</b> The proposed rule contains the right balance for mis-fueling mitigation plans (MMP) and pump labeling.</p>

	<p><b>Commenter(s):</b> Eco-Energy, ABBC</p> <p><b>Response:</b> WMSD appreciates the feedback that you concur with the proposal regarding MMPs and dispenser labeling.</p>
11	<p><b>Comment:</b> At this time, federal RVP rules are fluid; and, WMSD took the right approach to resolving uncertainty in the proposed rule. In essence, WMSD is proposing to do what other states have done; legalize the use of E15 while assuring that its use meets all state rules but defers to federal law on RVP. This approach allows E15 to be used in Arizona only insofar as its use complies with federal law (i.e., the proposal does not either prohibit E15 when allowed by federal rules nor allow it when restricted by federal rules). Perhaps most importantly, this approach avoids a conflict with federal law.</p> <p><b>Commenter(s):</b> Eco-Energy, ABBC</p> <p><b>Response:</b> WMSD appreciates the feedback that you concur with the proposal regarding RVP as contained in R3-7-708.</p>
1 2	<p><b>Comment:</b> There was discussion during the workshop on the WMSD’s plans to inspect electric vehicle charging stations as commercial devices and to ensure their compliance with HB2586’s requirements. We agree with your approach.</p> <p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> WMSD appreciates the feedback that you concur with our proposed direction regarding electric vehicle charging stations, the required method of sale, and commercial device inspection.</p>
1 3	<p><b>Comment:</b> We applaud the adjustments in Article 6, section 602(B)(2) to facilitate the Division’s ability to combat emerging pulsar tampering technologies used to steal fuel at retail locations. This shows both awareness and proactivity given expansion of these devices in Arizona.</p> <p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> WMSD appreciates the feedback that you concur with the proposal regarding the language in R3-7-602(B)(2).</p>
1 4	<p><b>Comment:</b> With respect to the Enhanced Vapor Recovery Stage II issue, APMA does not think the definition changes proposed by Maricopa County Air Quality Division adequately address the issue. As discussed in the subgroup meeting on April 27, a statutory change would likely be needed to allow voluntary Enhanced Vapor Recovery Stage II in a nonattainment area.</p> <p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> WMSD appreciates the feedback and agrees with your comment. Based on comments received during the referenced meeting and further research, the decision was made to remove the stage II vapor recovery rules in Article 9 due to the fact that A.R.S. §3-3512(K) specifically prohibits the use of stage II vapor recovery in an ozone nonattainment area designated as moderate, serious, severe, or extreme by the Environmental Protection Agency. This is reflected in the Notice of Proposed Rulemaking.</p>
1 5	<p><b>Comment:</b> APMA raised concerns during the workshop regarding the changes to Article 1, section 104. The proposed removal of sections 104 (B – N [March 17, 2022 draft lines 188-493]) would eliminate the rule-based protections of licensees, registered service representatives and weighmasters to consistent enforcement action. We support current enforcement approaches by the Department and Division leadership. We are not seeking to avoid consequences when a violation has occurred and been appropriately documented. Language in the current rule provides assurance to the regulated community that penalties will be fair and not overly punitive or targeted toward a specific sector or company. We were glad to participate in a subgroup meeting on April 27 to discuss these concerns. We do not agree with the proposed changes to the enforcement action section of the rule and suggest that the provisions proposed to be deleted should remain in the rule.</p>

	<p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> WMSD believes that the enforcement provisions contained in R3-7-104 are unnecessary since the enforcement actions allowed by the agency are already outlined in statute. As part of our efforts to streamline and remove unnecessary regulatory language, we are removing the duplicative enforcement actions. The agency has policies in place to ensure fair treatment of the regulated community.</p>
1 6	<p><b>Comment:</b> APMA continues to have concerns regarding the proposed rule changes to allow the sale of E15 in the Cleaner Burning Gasoline (“CBG”) covered area. Out-of-state ethanol interests are backing this component of the proposal, while Arizona-based companies fear that allowing E15 on a voluntary basis is the first step in a broader attempt to mandate E15 at the state or federal level. An E15 mandate would be hugely problematic for gas stations and convenience stores because many underground storage tank systems, pipes, sumps and dispensers currently in use are not compatible with more than an E10 blend.</p> <p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> WMSD is an enforcement agency with no agenda regarding the type of fuel that is legal in the state as long as it complies with state and federal requirements. As such, we work closely with ADEQ and EPA regarding any changes to the rules as they relate to Cleaner-Burning Gasoline and other fuels in the state. The proposed rule does not mandate the use of E15, but instead allows for the sale of E15 within the CBG-covered area, as it is allowed in the remainder of the state.</p>
1 7	<p><b>Comment:</b> WMSD facilitated stakeholder meetings from 2017-2020 related to potential changes to the CBG program and modifications to current fuel formulations. During that period, there was meticulous modeling to analyze, evaluate and understand the air quality impacts to potential CBG fuel formulation replacements. Using the EPA’s streamlining process to allow E15 in the CBG-covered area without adequately understanding air quality impacts raises serious concerns for the association. Phoenix is currently in marginal nonattainment of the 2015 National Ambient Air Quality Standard for ozone of 70 parts per billion and will likely reach serious nonattainment by 2025. Reformulated fuel is a key control in the EPA-approved State Implementation Plan to achieve ozone standards set forth in the Clean Air Act. The CBG program was developed to address the Arizona-specific air quality concerns in both the summer and winter seasons. It is a unique blend. If there is even a small air quality disbenefit from E15, that should be understood at the outset. At present, the California Air Resources Board does not allow the sale of E15 in the state because of air quality concerns.</p> <p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> Modeling performed by ADEQ indicates that emissions increases are de minimus and EPA has indicated that allowing the use of E15 in CBG is approvable as a SIP revision under the Clean Air Act.</p>
1 8	<p><b>Comment:</b> The California Air Resources Board regulations referenced in A.R.S. §3-3493(A)(2) specifically cap the oxygen content maximum at 10 percent by volume.</p> <p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> See response to Comment #2.</p>
1 9	<p><b>Comment:</b> The political undercurrents of the E15 debate should appear in the record. On April 12 from an ethanol plant in Iowa, President Biden announced that he would help reduce gasoline prices during the summer driving season via an EPA-issued emergency order to allow sales of E15 during the summer. E15 is typically banned during the summer under Clean Air Act provisions because of air pollution increases. The President’s announcement demonstrates that gaining political points for lowering gas prices is the administration’s motivating force, not air protection.</p> <p><b>Commenter(s):</b> APMA</p>

	<p><b>Response:</b> This is outside the scope of our proposed rule. As previously stated, WMSD is an enforcement agency with no agenda regarding the type of fuel that is legal in the state as long as it complies with state and federal requirements.</p>
20	<p><b>Comment:</b> At the very minimum, the E15 proposal should be conditional upon EPA’s approval of the necessary amendments to the State Implementation Plan. Fuel wholesalers and retailers will be in a very compromised position if they make investments to store, market and sell E15 and then the EPA disapproves it.</p> <p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> On March 8, 2022, ADEQ, MAG, WMSD, and industry stakeholders held a conference call with EPA to discuss the submission of a State Implementation Plan revision that would allow the use of E15 within the CBG-covered area. During the call, EPA stated that the use of E15 in the CBG area would be approvable as a SIP revision, because the federal RFG rules already allow the use of E15. In addition, EPA indicated that the use of E15 could take effect prior to EPA approval of a SIP revision incorporating the rule change.</p> <p>WMSD has kept EPA informed of the proposed rule, providing several iterations for review, and confirmed that EPA did not have any comments regarding the proposed rule that would indicate E15 would not be approved for use.</p> <p>E15 is a fuel that was approved by EPA over 10 years ago for use in certain vehicles. It has been allowed in Arizona outside of the CBG-covered area in accordance with federal law. EPA has approved the use of E15 in areas that require federal reformulated gasoline and has indicated that the use of E15 in the CBG area would be approvable as a SIP revision. Lastly, distribution and sale of E15 is voluntary, as there is no requirement to sell E15. Based on this information, we feel that the proposed rule is appropriate.</p>
21	<p><b>Comment:</b> If E15 is allowed, it is critical that the rules require adequate labeling to ensure that customers understand what they are purchasing. E15 may have a lower cost per gallon (depending on the cost of ethanol and the value of RINs), but it also has a reduced energy content compared to E10 gasoline.</p> <p><b>Commenter(s):</b> APMA</p> <p><b>Response:</b> WMSD has included labeling requirements that follow federal law. A.A.C. R3-7-705(C) as proposed, requires that all motor fuels meet the labeling requirements of 16 CFR 306. Additionally, per R3-7-705(C)(1)(b), E15 shall be labeled in accordance with 40 CFR 1090.1510. These labeling requirements correspond to the requirements of the Federal Trade Commission and the Environmental Protection Agency, respectively.</p>
22	<p><b>Comment:</b> POET supports this proposed regulation, which would allow E15 motor fuel as an additional option for consumers within the Clean Burning Gasoline (CBG) area in Arizona by removing low Reid Vapor Pressure (RVP) gasoline requirements.</p> <p><b>Commenter(s):</b> POET</p> <p><b>Response:</b> Thank you for your support of the proposed rule. To clarify, the proposed rules do not remove any of the RVP standards currently in place. The rules allow the sale of E15 in the CBG-covered area, while complying with existing RVP requirements. Outside of the CBG-covered area, the rules provide an allowance to exceed the RVP standard by 1.0 pounds per square inch if allowed by federal requirements.</p>

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

A.R.S. §§ 3-3414(D) and 3-3433(C) require the Associate Director of the Weights and Measures Services Division (“WMSD”) to consult with the Director of the ADEQ when adopting rules relating to quality standards for motor fuel, including oxygenated fuels, and standards and test methods for motor fuels. A.R.S. § 3-3512 requires the Associate Director of WMSD to consult with ADEQ and the Office of the State Fire Marshal when establishing rules for the installation and operation of stage I vapor recovery systems. WMSD consulted with both agencies as

part of this rulemaking process.

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

The rule requires permits for commercial devices, public weighmasters, registered service agencies and representatives, and the authority to construct gasoline vapor recovery systems. General permits are issued for all of these classifications except commercial devices. General permits are not issued for commercial devices for the following reasons:

- Commercial device licenses are specifically authorized under A.R.S. § 3-3451;
- Under A.R.S. § 3-3451(C), each commercial device is licensed separately;
- Each commercial device has an individual license fee as provided under A.R.S. § 3-3452(A), and these fees vary based on the type of device;
- A licensee may hold multiple licenses for one or more commercial device of the same type, or multiple licenses for a combination of different types of commercial devices;
- Each licensee operates commercial devices at different types of facilities (e.g. fuel station vs. grocery store), and these devices may be used for varying business activities and practices;
- The inspection approach and regulatory requirements for each licensee varies based on the type and quantity of devices that they operate, as well as the nature of their business;
- A general permit for a commercial device license is not technically feasible and would not meet the requirements of A.R.S. § 3-3451.

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

This rulemaking is consistent with the federal law. The Cleaner Burning Gasoline and Gasoline Vapor Recovery air quality programs are regulated at the federal level under the Clean Air Act and are required under State Implementation Plans in effect for the region.

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

No analysis was submitted.

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

The following material is incorporated by reference in R3-7-101:

The United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST), Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.

- Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices (2022 Edition)
- Handbook 130, Uniform Laws and Regulations (2022 edition)
- Handbook 133, Checking The Net Contents of Packaged Goods (2020 edition)

The following material is incorporated by reference in R3-7-702:

16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, effective December 8, 2021, Government Publishing Office, 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov

American Petroleum Institute (API), 200 Massachusetts Avenue NW Suite 1100, Washington, DC, 20001-5571:

- API Recommended Practice 1637 (API RP 1637), "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals," 4<sup>th</sup> edition published April 2020
- Manual of Petroleum Measurement Standards, Chapters 3.1A (Third Edition, August 2013, Reaffirmed December 2018) and 3.1B (Fourth Edition, October 2021)

ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org:

- ASTM Standard D975-21, "Standard Specification for Diesel Fuel," published 2021

- ASTM Standard D4806-21a, “Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel,” published 2021
- ASTM Standard D4814-21c, “Standard Specification for Automotive Spark-Ignition Engine Fuel,” published 2021
- ASTM Standard D5798-21, “Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines,” published 2021
- ASTM Standard D6751-20a, “Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels,” published 2020
- ASTM Standard D7862-21, “Standard Specification for Butanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel,” published 2021
- ASTM Standard D7467-20a, “Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20),” published 2020
- ASTM Standard D4057-19, “Standard Practice for Manual Sampling of Petroleum and Petroleum Products,” published 2019
- ASTM Standard D2699-21, “Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel,” published 2021
- ASTM Standard D2700-22, “Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel,” published 2022
- ASTM Standard D7717-11(Reapproved 2021), “Standard Practice for Preparing Volumetric Blends of Denatured Fuel Ethanol and Gasoline Blendstocks for Laboratory Analysis,” published 2021

Waiver Requests under Section 211(f) of the Clean Air Act, (Document EPA-420-B-19-054, October 2019 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.

California Air Resources Board, CARB, P.O. Box 2815, Sacramento, CA 95812 or [www.arb.ca.gov](http://www.arb.ca.gov).

- “California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model,” adopted April 20, 1995
- The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005
- Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001

The Federal Complex Model contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government Publishing Office, 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or [bookstore.gpo.gov](http://bookstore.gpo.gov).

SAE International, SAE J285, “Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines,” published April 2019, SAE International, 400 Commonwealth Drive, Warrendale, PA 15096 or [www.sae.org](http://www.sae.org).

National Institute of Standards and Technology (NIST) Handbook 158, *Field Sampling Procedures for Fuel and Motor Oil Quality Testing*, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or [bookstore.gpo.gov](http://bookstore.gpo.gov) (April 2016), incorporated by reference and on file with the Division.

American Petroleum Institute, Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994 Third Edition, August 2013, Reaffirmed December 2018) and 3.1B (1st edition, April 1992 Fourth Edition, October 2021), American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070.

The following material is incorporated by reference in R3-7-705:

Code of Federal Regulations, 40 CFR 1090.1510, December 4, 2020, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or [bookstore.gpo.gov](http://bookstore.gpo.gov)

The following material is incorporated by reference in R3-7-1001:

California Air Resources Board, CARB, P.O. Box 2815, Sacramento, CA 95812 or [www.arb.ca.gov](http://www.arb.ca.gov).

- Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition
- Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition
- Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012 edition
- Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition

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

Not applicable

**15. The full text of the rules follows:**

**TITLE 3. AGRICULTURE**  
**CHAPTER 7. DEPARTMENT OF AGRICULTURE**  
**WEIGHTS AND MEASURES SERVICES DIVISION**

**ARTICLE 1. ADMINISTRATION AND PROCEDURES**

Section	
R3-7-101.	Definitions
R3-7-103.	Licensing and Fees
R3-7-104.	Administrative Enforcement Action
R3-7-108.	Time-frames for Licenses, Renewals, and Authorities to Construct
R3-7-109.	Administrative Hearing Procedures
R3-7-110.	Motion for Rehearing or Review
Table 1.	Time-frames (calendar days)

**ARTICLE 2. COMMERCIAL DEVICES**

Section	
R3-7-201.	Licensing Process
R3-7-203.	Approval, Installation, <u>Use</u> , and Sale of Devices
R3-7-204.	<del>Livestock and Vehicle Scale Installation</del> <u>Repealed</u>

**ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE**

Section	
R3-7-302.	<del>Handbook 130 and Handbook 133 Packaging, Labeling, and Method of Sale</del>

**ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING RETAIL PRICING**

Section	
R3-7-402.	<del>Price-posting Inspection Procedure and Violation Exceptions</del> <u>Retail Price Requirements; Initial Inspections; Violations and Exceptions</u>

**ARTICLE 5. PUBLIC WEIGHMASTERS**

Section	
R3-7-501.	Qualifications; License and Renewal Application Process
R3-7-502.	Duties
R3-7-503.	Grounds for Denying License or Renewal; and Disciplinary Action
R3-7-504.	Scales and Vehicle Weighing
R3-7-505.	Weight Certificates
R3-7-506.	Seal of Authority
R3-7-507.	Prohibited Acts

**ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES**

Section	
R3-7-601.	Qualifications; License and Renewal Application Process
R3-7-602.	Duties
R3-7-603.	Grounds for Denying License or Renewal; <del>Suspension, Revocation, or Other</del> Disciplinary Action; <del>and Certification of Standards and Testing Equipment</del>
R3-7-604.	Prohibited Acts
R3-7-605.	<del>Material Incorporated by Reference</del> <u>Repealed</u>

**ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS**

Section	
R3-7-701.	Definitions
R3-7-702.	Material Incorporated by Reference
R3-7-703.	<del>Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers</del> <u>Return of Motor Fuels Collected During Volumetric Inspection</u>
R3-7-704.	Motor Fuel Dispensing Site Price and Grade Posting <del>on External Signs</del>
R3-7-705.	Dispenser Labeling at Motor Fuel Dispensing Sites
R3-7-707.	Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
R3-7-708.	Gasoline Oxygenate Blends

- R3-7-710. ~~Oxygenate~~ Blending Requirements
- R3-7-712. Water in Motor Fuel Dispensing Site Storage Tanks
- R3-7-713. Motor Fuel Storage Tank Labeling
- R3-7-714. ~~Additional Requirements for Motor Fuels~~ Repealed
- R3-7-715. Motor Fuel ~~Standards and~~ Testing Methods ~~and Requirements~~
- R3-7-716. Sampling and Access to Records
- R3-7-717. Motor Fuel Dispensing Site Equipment
- R3-7-718. Additional Requirements for the Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends
- R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB
- R3-7-750. Registration Relating to Arizona CBG or AZRBOB
- R3-7-751. Arizona CBG Requirements
- R3-7-752. General Requirements for Registered Suppliers
- R3-7-753. General Requirements for Pipelines and Third-party Terminals
- R3-7-754. Downstream Blending Exceptions for Transmix
- R3-7-755. Additional Requirements for AZRBOB and ~~Downstream~~ Oxygenate Blending
- R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks
- R3-7-757. Product Transfer Documentation; Records Retention
- R3-7-759. Testing Methodologies
- Table A. Arizona Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB
- R3-7-760. Compliance Surveys
- R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB
- R3-7-762. Penalties
- Table 1. ~~Type 1 Arizona CBG Standards~~ Repealed
- Table 2. ~~Type 2 Arizona CBG Standards~~ Repealed

**ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS REPEALED**

- Section
- R3-7-901. ~~Material Incorporated by Reference~~ Repealed
- R3-7-902. ~~Exemptions~~ Repealed
- R3-7-903. ~~Equipment and Installation~~ Repealed
- R3-7-904. ~~Application Requirements and Process for Authority to Construct Plan Approval~~ Repealed
- R3-7-905. ~~Initial Inspection and Testing~~ Repealed
- R3-7-906. ~~Fee~~ Repealed
- R3-7-907. ~~Operation~~ Repealed
- R3-7-908. ~~Training and Public Education~~ Repealed
- R3-7-909. ~~Recordkeeping and Reporting~~ Repealed
- R3-7-910. ~~Annual Inspection and Testing~~ Repealed
- R3-7-911. ~~Compliance Inspections~~ Repealed
- R3-7-912. ~~Enforcement~~ Repealed
- R3-7-913. ~~Stage II Decommissioning~~ Repealed

**ARTICLE 10. STAGE I VAPOR RECOVERY**

- Section
- R3-7-1001. Material Incorporated by Reference
- R3-7-1002. Exemptions
- R3-7-1003. Equipment and Installation
- R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval
- R3-7-1005. Initial Inspection and Testing
- R3-7-1006. Fee
- R3-7-1007. Operation
- R3-7-1008. Training and Public Education
- R3-7-1009. Recordkeeping and Reporting
- R3-7-1010. Annual Testing and Inspection
- R3-7-1012. Enforcement
- R3-7-1013. Stage II Vapor Recovery

**ARTICLE 1. ADMINISTRATION AND PROCEDURES**

**R3-7-101. Definitions**

The definitions in A.R.S. §§ 3-3401, 3-3414, 3-3436, and 3-3511 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a ~~corrective action~~ notice that the Division issues for a violation of A.R.S. Title 3, Chapter 19, or this Chapter, that orders a person to take corrective action, and may include hold or removal orders, and Warning, Out-of-Service, and Stop-Sale, Stop-Use tags:
  - a. ~~Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;~~
  - b. ~~Stop selling a commodity or liquid fuel until the person provides documentation to the Division that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;~~
  - e. ~~Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the Division that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;~~
  - d. ~~Stop performing weighmaster, deputy public weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the Division that the person is complying with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;~~
  - e. ~~Comply with labeling, policies, and cash register indicator displays according to A.R.S. Title 3, Chapter 19, and this Chapter;~~
  - f. ~~Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title 3, Chapter 19, and this Chapter;~~
  - g. ~~Excavate a vapor recovery site according to R3-7-104(L); or~~
  - h. ~~Comply with scheduling a test according to R3-7-104(L);~~
3. "Application" means, for purposes of R3-7-108, forms and all documents and additional information the Division requires an applicant to submit when applying for a license.
4. "ASTM" means ~~American Society for Testing and Materials~~ ASTM International.
5. "Area A" has the same meaning as in A.R.S. § 49-541.
6. "Area B" has the same meaning as in A.R.S. § 49-541.
7. "Area C" has the same meaning as in A.R.S. § 3-3401.
8. "Authority to Construct" means written pre-approval by the Division to allow construction of vapor recovery systems.
- ~~7-9.~~ "CARB" means the California Air Resources Board.
- ~~8-10.~~ "~~CARB certified~~ CARB-certified" means, with respect to a vapor recovery system or component, that the system or component has been certified in ~~an executive order of the a~~ CARB Executive Order.
- ~~9.~~ "~~Certified prover~~" means ~~a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.~~
- ~~10.~~ "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
- ~~11.~~ "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
  - a. ~~At a location where there was not one previously;~~
  - b. ~~To replace all gasoline storage tanks; or~~
  - e. ~~To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.~~
- ~~11.~~ "Day" means a calendar day unless otherwise specified.
12. "EPA" means the United States Environmental Protection Agency.
13. "Field calibration standard" has the same meaning as "secondary standards" in A.R.S. § 3-3401(38), and includes all test equipment such as weights, weight sets, measures, meters, counters, or other devices that are required for use by registered service agencies and representatives to certify the accuracy of commercial devices, and are required to be approved annually by the state metrology laboratory under A.R.S. § 3-3416.
- ~~13-14.~~ "Gasoline vapors" means volatile organic compounds in a gaseous state.
- ~~14-15.~~ "Handbook 44" means the United States Department of Commerce, ~~Technology Administration, National Institute of Standards and Technology (NIST) Office of Weights and Measures, NIST Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices~~, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2018~~ 2022 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.
- ~~15-16.~~ "Handbook 130" means the United States Department of Commerce, ~~Technology Administration, National Institute of Standards and Technology (NIST) Office of Weights and Measures, NIST Handbook 130, Uniform Laws and Regulations~~, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2018~~ 2022 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.
- ~~16-17.~~ "Handbook 133" means the United States Department of Commerce, ~~Technology Administration, National Institute of Standards and Technology (NIST) Office of Weights and Measures, NIST Handbook 133, Checking The Net Contents of Packaged Goods~~, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~January 2018~~ 2020 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.

- ~~17. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.~~
- ~~18. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.~~
- ~~19-18. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.~~
- ~~20. "Motor vehicle" means any vehicle equipped with a spark ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.~~
- ~~21-19. "NCWM" means the National Conference on Weights and Measures.~~
20. "Net quantity" means that quantity of packaged product remaining after all necessary deductions for tare have been made.
- ~~22-21. "NIST" means the National Institute of Standards and Technology.~~
- ~~23-22. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.~~
- ~~24-23. "Out-of-service Out-of-Service tag" means a red rejection tag that prohibits the further commercial use of a device, signifies signifying that a commercial device does not meet the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter.~~
- ~~25. "Person" as defined in A.R.S. § 3-3401, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.~~
24. "Person" has the same meaning as prescribed in A.R.S. § 3-3401, but includes an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline, third-party terminal, packer, manufacturer, licensee, transporter, or consignee.
- ~~26-25. "Placed in service" means the certification by a registered service agency or representative that a commercial device meets the requirements of Title 3, Chapter 19, Handbook 44, and this Chapter and may be used, unless the Division orders otherwise.~~
- ~~27-26. "Placed-in-service report" means the form that a registered service representative completes and submits to the Division after placing newly installing a commercial device or restoring a commercial device in into service.~~
- ~~28. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.~~
- ~~29-27. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.~~
28. "Retail price inspection" means the inspection of a retail location for compliance with retail price posting or retail price verification requirements.
- ~~30-29. "Seal of authority Authority" means a physical or electronic stamp or press of the Division official mark, issued to a public weighmaster, certifying the public weighmaster's authority to issue weight certificates.~~
- ~~31-30. "Service Counter counter" means a display staffed by a sales associate and requires a customer to receive assistance in order to purchase a product.~~
- ~~32. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the Division.~~
31. "Stage I vapor recovery system" has the same meaning as in A.R.S. § 3-3511.
- ~~33-32. "Stage II vapor recovery system" means a system where at least ninety percent 90% by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system.~~
- ~~34-33. "Stop sale, stop use Stop-Sale, Stop-Use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.~~
- ~~35. "Third party registered service agency" means a registered service agency that performs work under contract for any business or company.~~
- ~~36-34. "Underground storage tank" means a tank as described in A.R.S. § 49-1001.~~
- ~~37. "Unit" means a quantity adopted as a standard of measurement.~~
- ~~38-35. "Vapor recovery registered service representative" means an individual to whom the Division has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title 3, Chapter 19, or this Chapter including annual vapor-recovery tests.~~
36. "Vapor recovery test equipment" means all test equipment such as measures, meters, counters or other devices that are required for use by registered service agencies and representatives to verify the performance of vapor recovery systems, and are certified according to CARB test procedures, manufacturer specifications or this Chapter.
- ~~39-37. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with Title 3, Chapter 19, Handbook 44, CARB Executive Orders, or this Chapter.~~
- ~~40-38. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the Division, which certifies the accuracy of the weight of the commodity measured.~~

### **R3-7-103. Licensing and Fees**

- A. A license is effective on the first day of the month following the date that the license application is ~~filed with~~ determined by the Division to be complete and accurate. ~~If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.~~

- B. A payment is delinquent if not received or postmarked on or before the due date. The Division shall not process a license or renewal application for which payment is delinquent.
- C. If the Division receives payment for a license that excludes the payment of applicable ~~late~~ fees or past due civil penalties, the Division shall apply the license fee payment to the licensee's account and issue a separate invoice for the additional monies owed to the Division. The license will not be issued by the Division until all fees due are paid.

**R3-7-104. Administrative Enforcement Action**

- A. ~~The Division shall take progressive enforcement action for~~ For a violation of A.R.S. Title 3, Chapter 19, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter, the Division may:
  - 1. Issue a Warning, Out-of-Service, Stop-Sale, Stop-Use tag, or issue another administrative order under A.R.S. § 3-3415;
  - 2. Seize or condemn a Seal of Authority, weight, measure, or other commercial device under A.R.S. §§ 3-3414 and 3-3415;
  - 3. Impose a civil penalty under A.R.S. §§ 3-3473 and 3-3475;
  - 4. Revoke or suspend a license under A.R.S. § 3-3472;
  - 5. Utilize appropriate progressive enforcement action; or
  - 6. Implement any combination of the above.
- B. ~~The Division shall make available a copy of its inspection report to the person who owns or operates a location that the Division inspects. The report shall include the inspection results and violations. The Division shall send a copy of the inspection report to the owner of a location by e-mail if the owner has provided an e-mail address to the Division. Inspection results and violations shall be posted on the Division website~~ The Division may inspect or examine premises, equipment, or relevant records to determine compliance with A.R.S. Title 3, Chapter 19, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter. Failure of a regulated person to comply with such inspection or examination shall be considered a violation under A.R.S. § 3-3473(A)(1).
- C. ~~The person who owns or operates a location inspected by the Division may request a hearing under R3-7-109 to dispute the inspection results, violation, or enforcement action.~~ In addition to the enforcement action in subsection (A), the Division may issue an administrative order requiring a person to excavate a vapor recovery system if the person buries a vapor recovery system or component prior to a Division pre-burial inspection.
- D. ~~The Division shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.~~
- E. ~~A maximum civil penalty may be doubled as stated in A.R.S. § 3-3475(C).~~
- F. ~~Commercial device:~~
  - 1. ~~The Division may place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.~~
  - 2. ~~The Division may confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without Division authority.~~
  - 3. ~~The Division may condemn and confiscate a weight, measure, or other commercial device that the Division determines is incorrect and not capable of compliance with Handbook 44.~~
  - 4. ~~The Division shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in A.R.S. Title 3, Chapter 19, Handbook 44 or this Chapter and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.~~
    - a. ~~A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.~~
    - b. ~~A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter.~~
  - 5. ~~The Division shall issue a warning tag when a commercial device is not in compliance with the requirements in A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter and the lack of compliance creates a situation favorable to the consumer. The Division shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter.~~
  - 6. ~~The Division may issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.~~
  - 7. ~~The Division shall issue an out-of-service tag if a Division inspector cannot conduct an inspection of a commercial device because of malfunction, abnormal performance, or a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.~~
  - 8. ~~The Division shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero as prescribed in Handbook 44.~~
  - 9. ~~The Division shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The Division shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.~~

10. The Division shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The Division shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.

11. In addition to any enforcement action under subsections (F)(1) through (10):

a. If the Division finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title 3, Chapter 19, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:

i. The Division may impose a civil penalty up to \$300 on the person who owns or operates the commercial device; and  
ii. The Division may impose a civil penalty up to \$500 on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.

b. If the Division finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:

i. The Division may issue an administrative order to the person at the conclusion of the inspection and impose a civil penalty up to \$300; and  
ii. The Division may issue an administrative order to the person and impose a civil penalty up to \$500 at each reinspection until the person complies with Handbook 44 and this Chapter.

**G. Public and deputy public weighmaster.**

1. The Division may issue an administrative order if a public weighmaster's:

a. Weigh tickets are not in numbered sequence or are missing;  
b. The seal, press, or electronic seal is not readable, or  
c. Records are not maintained according to R3-7-505.

2. The Division may issue an administrative order and impose a civil penalty up to \$500 on a public weighmaster if:

a. The public weighmaster's weigh tickets contain inaccurate information;  
b. The public weighmaster violates an administrative order;  
c. The public weighmaster misuses a seal or press or has an unauthorized seal or press; or  
d. The public weighmaster misuses an electronic seal or signature.

3. The Division shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.

4. The Division shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.

5. The Division shall issue an administrative order and a civil penalty up to \$300 to a person who performs public weighmaster duties without a license.

6. If a public weighmaster permits an unlicensed person to perform deputy public weighmaster duties, the Division may:

a. Impose a civil penalty up to \$300 on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties;  
b. Impose a civil penalty up to \$500 on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties; and  
c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties more than twice.

**H. Packaging.**

1. The Division shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:

a. Returning the package to the packer or manufacturer;  
b. Labeling the package to reflect its correct quantity;  
c. Placing a notice on the package that states the violation, and pricing the package to reflect its correct quantity; or  
d. Repackaging the commodity so the package contains the quantity represented.

2. In addition to an administrative order, the Division may impose a civil penalty up to \$500 per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

**I. Price verification.**

1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.

2. The Division shall issue a stop-sale, stop-use tag to a person who fails a price verification inspection or reinspection if a pricing violation cannot be corrected within 30 minutes of the Division completing the inspection:

a. The Division may impose a civil penalty up to \$100 per violation on a person who fails a reinspection if the Division finds more than one item at more than its posted price.

b. The Division may impose a civil penalty up to \$200 per violation on a person who fails a second reinspection. The Division shall increase the per violation civil penalty imposed by \$100 for each subsequent reinspection until the violation is corrected.

- ~~3. If the Division receives and substantiates a complaint about a person against whom the Division took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is \$100 more than the civil penalty that the Division previously imposed against this person.~~
- ~~4. The Division may issue a warning tag to a person who does not have a written price-error policy. The Division may impose a civil penalty up to \$500 if the person does not have a written price-error policy upon reinspection.~~
- ~~5. The Division shall issue a warning tag to a person who does not have a price display visible to the consumer at a check-out location. The Division shall issue an out-of-service tag if the person does not have a price display visible to the consumer at a check-out location upon reinspection.~~

~~J. Price posting:~~

- ~~1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.~~
- ~~2. The Division shall issue a stop-sale, stop-use tag to a person who fails a price posting inspection if the violation cannot be corrected within 30 minutes of the Division completing the inspection.~~
- ~~3. The Division may impose a civil penalty up to \$50 for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.~~
- ~~4. The Division may impose a civil penalty up to \$100 for each inspected lot not priced if a person fails a second reinspection.~~
- ~~5. If the Division receives and substantiates a complaint about a person against whom the Division took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is \$100 more than the civil penalty that the Division previously imposed against this person.~~

~~K. Fuel quality and labeling:~~

- ~~1. The Division shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title 3, Chapter 19, or this Chapter. The Division shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.~~
- ~~2. The Division may issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title 3, Chapter 19, or this Chapter. The Division may impose a civil penalty up to \$300 if the person does not correct the labeling or signage violation within the time specified in the administrative order.~~
- ~~3. The Division may issue an administrative order to, and impose a civil penalty up to \$500 per octane level or fuel grade to a person who violates a fuel quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:
  - ~~a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel;~~
  - ~~b. Selling the motor fuel at the correct octane level;~~
  - ~~c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance;~~
  - ~~d. Removing all water from the storage tank or emptying the tank per R3-7-711 or R3-7-712, or~~
  - ~~e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.~~~~
- ~~4. The Division may issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the Division's request. The Division may impose a civil penalty up to \$300 on a person who provides the requested documentation between 24 and 72 hours. The Division may impose a civil penalty up to \$500 on a person who does not provide the requested documentation within 72 hours.~~

~~L. Vapor recovery:~~

- ~~1. The Division may issue an administrative order to stop construction at a vapor recovery site and impose a civil penalty up to \$500 on a person who:
  - ~~a. Begins construction or makes a major modification without an authority to construct plan approval;~~
  - ~~b. Does not comply with the authority to construct plan approval, or~~
  - ~~c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:
    - ~~i. The vapor recovery system and its components comply with A.R.S. Title 3, Chapter 19, and this Chapter; and~~
    - ~~ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title 3, Chapter 19, and this Chapter.~~~~~~
- ~~2. The Division may issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a Division pre-burial inspection and may impose a civil penalty up to \$500 if the excavated system does not pass required vapor recovery tests according to A.R.S. Title 3, Chapter 19, and this Chapter.~~
- ~~3. The Division shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The Division shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.~~
- ~~4. The Division may impose a civil penalty up to \$100 on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.~~

- ~~5. The Division may issue a warning tag to a person whose vapor recovery system labeling does not comply with R3-7-713. The Division may issue a stop-sale, stop-use tag and impose a civil penalty up to \$500 on a person who does not correct a labeling violation within the time specified on a warning tag.~~
- ~~6. The Division shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under R3-7-905, R3-7-910, R3-7-1005, or R3-7-1010. If the test failure is isolated to a system component, the Division's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.~~
- ~~M. The Division may impose a civil penalty up to \$500 and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The Division may impose a civil penalty up to \$500 and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.~~
- ~~N. Registered service agency and registered service representative:
  - ~~1. If a registered service agency submits to the Division an inaccurate or incomplete placed-in-service or test report, the Division may impose a civil penalty up to \$50 on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.~~
  - ~~2. The Division may impose a civil penalty up to \$300 on a registered service representative who incorrectly:
    - ~~a. Installs a commercial device,~~
    - ~~b. Repairs a commercial device,~~
    - ~~c. Tests a vapor recovery system, or~~
    - ~~d. Repairs a vapor recovery system.~~~~
  - ~~3. If an unlicensed person represents itself as a registered service agency, the Division may:
    - ~~a. Issue an administrative order,~~
    - ~~b. Impose a civil penalty up to \$500 and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and~~
    - ~~c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.~~~~
  - ~~4. The Division may issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The Division may impose a civil penalty up to \$300 on the registered service agency for which the unlicensed individual works.~~
  - ~~5. The Division may issue an administrative order if a registered service representative places a commercial device into service without Division authorization. The Division may impose a civil penalty up to \$500 on the registered service agency whose representative places a commercial device into service without Division authorization.~~
  - ~~6. The Division may impose a civil penalty up to \$500 on a registered service agency whose registered service representative uses a metrology standard or vapor recovery testing equipment that is not certified according to this Chapter and, as applicable, CARB test methods. The Division may confiscate a metrology standard or vapor recovery testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The Division shall return the standard or equipment when it is properly certified.~~
  - ~~7. The Division shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title 3, Chapter 19, and this Chapter:
    - ~~a. Notify the Division of a test date and time,~~
    - ~~b. Begin a test at the approved time,~~
    - ~~c. Appear for a witnessed test,~~
    - ~~d. Close a vapor recovery system for repairs if the system fails, or~~
    - ~~e. Perform a test.~~~~
  - ~~8. The Division may impose a civil penalty up to \$300 on a vapor RSA that violates subsections (M)(7)(a), (b), (d), or (e). The Division may impose a civil penalty up to \$300 on a vapor recovery registered service agency that violates subsection (M)(7)(e) twice in 12 months.~~
  - ~~9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the Division may:
    - ~~a. Impose a civil penalty up to \$300 on the registered service agency for the first violation, and~~
    - ~~b. Impose a civil penalty up to \$500 on the registered service agency for each subsequent violation by the registered service representative.~~~~
  - ~~10. If a vapor recovery registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title 3, Chapter 19, or this Chapter, the vapor recovery registered service representative shall:
    - ~~a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by R3-7-910;~~
    - ~~b. Notify the Division of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and~~
    - ~~c. Notify the Division of the time of the test required by R3-7-910 or R3-7-1010 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.~~~~
  - ~~11. If a recovery registered service representative fails to comply with R3-7-602(B)(2) the Division may:~~~~

- ~~a. Impose a civil penalty up to \$300 on the registered service representative;~~
  - ~~b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and~~
  - ~~c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).~~
- ~~12. If a registered service representative fails to notify the Division of a non-compliant commercial device under R3-7-602(B)(1)(f), the Division may impose a civil penalty up to \$300.~~

**R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct**

- A. For each type of license, renewal, or authority issued by the Division, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.
- B. For each type of license, renewal, or authority issued by the Division, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is set forth in Table 1 and begins on the date the Division receives an application.
  - 1. If the application is not administratively complete, the Division shall send a deficiency notice to the applicant.
    - a. The deficiency notice shall state each deficiency and the information needed to complete the application.
    - b. Within the ~~time~~ time-frame provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Division the missing information specified in the deficiency notice. The time-frame for the Division to finish the administrative completeness review is suspended from the date the Division mails or e-mails the deficiency notice to the applicant until the date the Division receives the missing information.
    - c. If the applicant does not submit the missing information within the ~~time~~ time-frame to respond to the deficiency notice set forth in Table 1, the Division shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.
  - 2. If the application is administratively complete, the Division shall send a written notice of administrative completeness to the applicant. If the Division, within 10 days of submittal, fails to send a written notice of administrative completeness or deficiency notice outlined in subsection (B)(1), the application shall automatically be deemed administratively complete.
- C. For each type of license, renewal, or authority issued by the Division, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the Division sends written notice of administrative completeness to the applicant.
  - 1. During the substantive review time-frame, the Division may make one comprehensive written request for additional information. The applicant shall submit the additional information within the ~~time~~ time-frame provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Division to finish the substantive review is suspended from the date the Division mails or e-mails the request until the Division receives the information.
  - 2. If the applicant does not submit the requested additional information within the time-frame provided in Table 1, the Division shall issue a written notice informing the applicant that the application is deemed withdrawn. ~~The applicant may request in writing that the Division deny the application within 15 days of the date of the notice of withdrawal.~~ An applicant who desires to reapply shall begin the application process anew.
  - 3. The Division shall issue a written notice of denial of license, renewal, or authority if the Division determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title 3, Chapter 19, and this Chapter for a license, renewal, or authority. The notice of denial shall include:
    - a. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and
    - b. The name and telephone number of a Division employee who can answer questions regarding the application process.
  - 4. If the applicant meets all of the substantive criteria required by A.R.S. Title 3, Chapter 19, and this Chapter for a license, renewal, or authority the Division shall issue the license, renewal, or authority to the applicant.
- D. ~~The time period~~ time-frame for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the postmark date.
- E. In computing any ~~time period~~ time-frame prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. ~~The~~ Unless otherwise specified herein, the computation shall include intermediate Saturdays, Sundays and holidays.
- ~~F. An applicant whose license, renewal, or authority is denied has a right to a hearing, an opportunity for rehearing, and if the denial is upheld, judicial review pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10, and A.R.S. Title 12, Chapter 7, Article 6.~~

**R3-7-109. Administrative Hearing Procedures**

A person who is adversely affected by an action made by the Division may request a hearing to dispute license denial, inspection results, a violation, or enforcement action under A.R.S. Title 41, Chapter 6, Articles Article 10 6 and 10 apply to the Division's hearings.

**R3-7-110. Motion for Rehearing or Review**

- A. Except as provided in subsection ~~(G)~~ (I), any party in a contested case or appealable agency action before the Division who is aggrieved by a decision rendered in the case may file with the Division, not later than 10 days after service of the decision, a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds for the motion. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed

by certified mail to the party at the party's last known residence or place of business; or by electronic mail if the party has agreed to receive electronic notifications.

- B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Division. A party shall provide a copy of any pleading on all opposing parties or parties who may be directly affected by the issues presented, and the pleading shall contain a certification of delivery to listed recipients. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Division may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. A rehearing or review of the decision may only be granted for any of the following reasons materially affecting the moving party's rights ~~or ability to receive a fair hearing:~~
  1. Any irregularity in the hearing, order, or abuse of discretion ~~by the administrative law judge or the Division~~ depriving the moving party of a fair hearing:
  2. Misconduct of the Division, the administrative law judge, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; or
  7. That the decision is not justified by the evidence or is contrary to law.
- ~~D.~~ If a rehearing is granted, the Division may hear the case or may refer the case to the Office of Administrative Hearings. The decision of the administrative law judge becomes the decision of the Division unless rejected or modified by the Division in accordance with A.R.S. Title 41, Chapter 6, Article 10. A decision of the Division at this level of review is a final decision.
- ~~E.~~ Except for a decision under subsection (I), a rehearing or review of the final Division decision shall be requested in order for the aggrieved party to have the right to appeal under A.R.S. Title 12, Chapter 7, Article 6.
- ~~D.E.~~ The Division may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the Division may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.
- ~~E.G.~~ The Division, on its own initiative, within the time time-frame for filing a motion for rehearing or review under this rule, may order a rehearing or review for any of the reasons set forth in subsection (C), after giving the parties notice and an opportunity to be heard.
- ~~F.H.~~ When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party has 15 days from the date of service to serve opposing affidavits. The Division may extend the period to respond up to 20 days for good cause, or by written stipulation of the parties. If the Division permits reply affidavits, the replying party has five business days in which to serve them.
- ~~G.I.~~ If the Division makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Division may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Division's final decision.

**Table 1. Time-frames (calendar days)**

Type of License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Request for Additional Information	Overall Time-frame
Commercial Device	R3-7-201	14	28	30	30	44
Public Weighmaster	R3-7-501	14	28	30	30	44
Registered Service Agency/ Representative	R3-7-601	14	28	30	30	44
Authority to Construct	R3-7-904 R3-7-1004	14	28	30	30	44

**ARTICLE 2. COMMERCIAL DEVICES**

**R3-7-201. Licensing Process**

- ~~A.~~ Before using a commercial device, a person or a contracted registered service representative shall apply for a ~~license for the commercial device~~ license. The commercial device may be used without a license for up to 30 days after an application is filed with the Division. The application shall be on a form supplied by the Division that includes:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of the location where the commercial device will be operated;
3. A description of the commercial device;
4. The applicant's signature; and
5. ~~An~~ The e-mail address for the owner or operator of the commercial device owner or operator for the Division to provide licenses, invoices, inspections and reports, enforcement action, and other notifications.

**B.** A licensee shall notify the Division of a change in business name or address within 30 days of the change. The Division does not charge a fee to process a change in business name or address.

**C.** Change of business ownership requires an application to transfer a license.

**R3-7-203. Approval, Installation, Use, and Sale of Devices**

**A.** A commercial device installed or placed in use after January 1, 1975, shall have an NCWM National Type Evaluation Program (~~NTEP~~) ("NTEP") Certificate of Conformance or have a ~~certificate of approval from the California Type Evaluation Program (CTEP) ("CTEP") Certificate of Approval.~~ NTEP Certificate of Conformance issuance may be verified at the NCWM website: [http://www.ncwm.net/ntep/cert\\_search](http://www.ncwm.net/ntep/cert_search).

1. If a commercial device has been continuously licensed, or evidence shows it has been in use by the owner in Arizona since January 1, 1975, the commercial device is exempt from ~~NCWM or California Type Evaluation Program prototype NTEP or CTEP approval requirements.~~
2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a Division inspection, the Division shall issue ~~an out-of-service~~ a Stop-Sale, Stop-Use tag or confiscate ~~seize~~ the device per ~~R3-7-104(F)(3)~~ R3-7-104(A) and revoke the commercial device license under A.R.S. § 3-3472. A person shall no longer use the device commercially.

**B.** ~~The seller of a commercial device that is remanufactured for the purpose of commercial sale shall mark the commercial device as remanufactured. A person shall not use a commercial device that has an Out-of-Service or Stop-Sale, Stop-Use tag until the person repairs the commercial device as ordered by the Division, the commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter, and approval is obtained from the Division to resume use of the device. If a person sells a commercial device that has an Out-of-Service or Stop-Sale, Stop-Use tag, the seller shall not remove the tag and must disclose to the buyer that the commercial device is not in compliance.~~

**R3-7-204. Livestock and Vehicle Scale Installation Repealed**

- ~~**A.** Portable livestock and portable vehicle scales shall be designed to be movable from one location to another.~~
- ~~**B.** Portable scales and low profile electronic scales shall be accessible for maintenance.~~
- ~~**C.** Notwithstanding Handbook 44, vehicle and livestock scales installed above ground shall have 2 feet minimum clearance from the bottom of the lowest platform support girder to the ground.~~
- ~~**D.** Notwithstanding Handbook 44, vehicle and livestock scales, installed with a pit, shall have 2 feet minimum clearance from the bottom of the main girder that is lowest in platform support to the pit floor.~~

**ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE**

**R3-7-302. Handbook 130 and Handbook 133 Packaging, Labeling, and Method of Sale**

- A.** A person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130, except as otherwise stated in this Chapter. A person shall ensure that packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in this Chapter.
- B.** A retail seller shall ensure that a package that is offered for sale in a ~~variable~~ random weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:
1. Clearly labels the price-per-pound where the packaged produce is displayed, and
  2. Deducts a tare for the packaging from the gross weight at the time of sale.
- C.** ~~A retail seller shall price a commodity at the date and time that it is ordered by a customer. If the Division issues an administrative order to a person at location where a package inspection is held, for a package that is not in compliance with a requirement in Handbook 130 or Handbook 133, the person to whom the administrative order is issued shall correct the package violation by:~~
1. Removing the package from sale;
  2. Labeling the package to reflect its correct net quantity;
  3. Placing a notice on the package that corrects the package violation, and pricing the package to reflect its correct net quantity; or
  4. Repackaging the commodity so the package contains the net quantity represented.
- D.** ~~A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retailer shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a~~

retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.

- ~~E. A person who owns or operates a plant nursery shall label each commodity with its identity and price, or post a sign with this information adjacent to the point of display.~~
- ~~F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.~~
- ~~G. Items in or behind a service counter that can be sold only with the assistance of a sales associate are not required to have a price displayed. If a price is displayed, it must meet the requirements of this Chapter.~~

#### **ARTICLE 4. PRICE-VERIFICATION AND PRICE POSTING RETAIL PRICING**

##### **R3-7-402. ~~Price-posting Inspection Procedure and Violation Exceptions~~ Retail Price Requirements; Initial Inspections; Violations and Exceptions**

- ~~A. The Division shall choose one item that was used and up to four adjacent items that were not used for a price-verification inspection, as the samples for a price-posting inspection. Retail price requirements. In addition to the requirements in A.R.S. § 3-3431, a person who offers, exposes, or advertises a commodity for sale or rent shall:
  - ~~1. Price a commodity at the date and time that it is ordered by a customer;~~
  - ~~2. Post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed;~~
  - ~~3. If the price of the commodity is by weight, measure, or count, place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed;~~
  - ~~4. If a price is reduced by a percentage or a fixed amount from a previously offered price, place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed;~~
  - ~~5. Label each commodity offered for sale within a plant nursery with its identity and price, or post a sign with this information adjacent to the point of display; and~~
  - ~~6. Ensure that the price of each item purchased is displayed visibly to the public at each check-out location.~~~~
- ~~B. If the Division finds an alleged price-posting violation involving an item used during its price-verification inspection, the Division shall record the price posting violation on the inspection report. Initial retail price inspections. The initial retail price inspection of a location is for educational purposes and administrative enforcement action will not be imposed for a violation identified during an initial inspection. An initial inspection is the first retail price inspection conducted at a location when no prior retail price inspections have occurred at that location under the current ownership.~~
- ~~C. The following are price-posting violations:
  - ~~1. No price is posted or displayed for an inspected item unless it is not required under subsection (D)(12);~~
  - ~~2. Less than 98 percent of the prices of inspected items are posted accurately; or~~
  - ~~3. A percentage off is provided, but there is no price displayed for the item on, in, or behind a service counter. Price verification.~~
    - ~~1. Violations. Items sampled for price verification that scan at a price higher than the marked or posted price are considered overcharges. An inspected location shall be found in violation if more than one overcharge is recorded in a price verification sample.~~
    - ~~2. Violation exceptions. Items sampled for price verification that scan at a price lower than the marked or posted price are considered undercharges, and are not a violation.~~~~
- ~~D. The following are not price-posting violations: Price posting.
  - ~~1. Violations. The following are price posting violations:
    - ~~a. No price is posted or displayed for an inspected item;~~
    - ~~b. Less than 98% of the items sampled for price posting during a retail price inspection have a marked or posted price; or~~
    - ~~c. A percentage or quantity discount is provided, but there is no price displayed for the item on which the consumer may calculate or compare the discounted price to the regular price.~~~~
  - ~~2. Violation exceptions. The following are not price posting violations:
    - ~~1-a. A price is posted on a shelf where an item is displayed rather than marked on the item individually; A price is posted or displayed as allowed in A.R.S. § 3-3431(L) and (N);~~
    - ~~2-b. A price is posted on the shelf or on a hook in front of or behind a row of items at the farthest left side of all items with the same price for up to 3 feet of shelf space, or at the farthest left and farthest right side of the shelf or hooks with the same priced displaying items of the same price. For items of the same price, the uniform price codes Universal Product Code ("UPC") may differ for the commodities with prices labeled in this manner, as long as the price posted is a generic price and does not refer to a specific product;~~
    - ~~3-c. A price is posted in a location clearly visible to the consumer on a vertical display in a location clearly visible to the consumer for containing items of the same price;~~
    - ~~4-d. Self-contained A price is posted on the inside or outside of the door of a self-contained refrigerated coolers may have prices posted on the inside or outside of the refrigerator doors located on cooler on or in front the left, right, or center of the shelving units in a location clearly visible to the consumer;~~
    - ~~5-c. A storage area that is posted as a storage area for which a customer should ask for assistance Items contained in a clearly marked storage or restocking area where a customer must ask for employee assistance to obtain an item;~~
    - ~~6. A restocking area that is posted as a restocking area for which a customer should ask for assistance;~~~~~~

- ~~7-f.~~ A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;
- ~~8-g.~~ An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask an employee for price information ~~assistance about~~ regarding an item contained in the display;
- ~~9-h.~~ A menu-type sign at a point of display that lists the name and price of every item at the point of display in legible text. A menu-type sign may also be used to display single-item purchase prices in areas where space is limited, or used to display a price for purchase of multiple items and single-item purchase prices at the point of display as long as it is ~~located~~ posted at, above, or near adjacent to the point of display;
- ~~10-i.~~ A point of display contains more than one item posted with the manufacturer's name or logo and the price and name of each item ~~in~~ contained within the point of display is posted at, above, or adjacent to the point of display;
- ~~11-j.~~ A price is posted only at each entrance to a store ~~but that and the posted~~ price is the price of each item ~~in~~ displayed for sale within the store, or a price is posted at each entrance to a department within a store ~~but that and the posted~~ price is the price of each item ~~in~~ displayed for sale within the department;
- ~~12-k.~~ A notice states that there is an additional charge based on an item's size ~~and each size~~ and the additional charge for each size is posted at, above, or adjacent to the point of display; and
- ~~13-l.~~ An item that does not have a price ~~and displayed but~~ is located in or behind a service counter and available only with the assistance of a sales associate as allowed in A.R.S. § 3-3431(M). If a price is displayed, it must meet the requirements of this Chapter.

## ARTICLE 5. PUBLIC WEIGHMASTERS

### **R3-7-501. Qualifications; License and Renewal Application Process**

- A. In addition to the requirements of A.R.S. § 3-3453, to be a public weighmaster or a deputy public weighmaster, a person shall:
  - 1. Be at least 18 years old, and
  - ~~2. Be able to operate a scale accurately, and~~
  - ~~3-2.~~ Be able to execute weight certificates properly.
- B. A person shall not perform the duties of a public weighmaster until the person passes the written public weighmaster examination administered by the Division with a minimum score of ~~75 percent~~ 75%. A person may not take the examination more than three times in six months and must wait 7 seven days before retaking the exam.
- C. A person that meets the qualifications for public weighmaster or deputy public weighmaster may apply for a license on a form supplied by the Division. A separate application shall be submitted for each location where the public weighmaster or deputy public weighmaster will issue weight ~~tickets~~ certificates.
  - 1. The application form includes:
    - a. The applicant's name, address, ~~and~~ telephone number, and e-mail address;
    - b. A statement by the applicant that the applicant knows and understands public weighmaster laws and rules;
    - c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
    - d. The applicant's signature.
  - 2. The public weighmaster's application form also includes:
    - a. The name of each deputy public weighmaster operating at each location;
    - b. A statement that the public weighmaster understands they are responsible to ensure that any deputy public weighmasters working at the location are adequately trained and licensed;
    - c. The name and address of the scale; and
    - d. The scale description.
  - 3. ~~The deputy public weighmaster application shall include a certification that they understand the requirements on a form provided by the Division and be signed by both the public weighmaster and the applicant. The deputy public weighmaster application shall be on a form provided by the Division, and include a certification that the applicant understands the requirements in this Article. The deputy public weighmaster application shall be signed by both the public weighmaster and the applicant.~~
  - 4. An applicant may be required to submit evidence of qualifications.
  - 5. The public weighmaster shall ensure all deputy public weighmasters are licensed for the location prior to their issuance of weight ~~tickets~~ certificates.
  - 6. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. § 41-1080.
- D. Before the Division issues or renews a public weighmaster or deputy public weighmaster license, the applicant shall pay the required fees and provide information required in A.R.S. Title 3, Chapter 19, and this Chapter.
- E. A public weighmaster licensee shall notify the Division of a change in business name or address within 30 days of the change. The Division does not charge a fee to process a change in name or address.
- F. Change of business ownership requires an application to transfer a license.
- F.G. In the event a public weighmaster leaves employment, a licensed deputy public weighmaster may utilize a public weighmaster stamp ~~which that~~ contains only the location identity as issued under R3-7-506(B) for 30 days at a location while a public

weighmaster license application is underway. A public weighmaster stamp containing the public weighmaster's name may not be ~~continued~~ continue to be used following a public weighmaster's departure.

### **R3-7-502. Duties**

A public weighmaster shall:

1. Be responsible for the daily operation and maintenance of the licensed scale used when performing public weighmaster duties;
2. Use scales according to applicable laws and rules;
3. Be responsible for all acts performed by any deputy public weighmaster designated by the public weighmaster; and
4. Ensure that deputy public weighmasters are licensed prior to their issuance of a weight ~~ticket~~ certificate and cancel deputy public weighmasters licenses within 10 days of their leaving employment to ensure each location has the correct number of licensed deputy public weighmasters. A deputy public weighmaster license may be canceled by sending an e-mail or other written notification to the Division.

### **R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action**

- A. The Division may deny a public or deputy public weighmaster license for any of the following reasons:
  1. Providing false or misleading information;
  2. Failing to meet the requirements stated in this Article; or
  3. Any of the reasons stated in subsections (B)(1) through (9).
- B. The Division may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the Division has determined that the public weighmaster:
  1. Does not have the ability to ~~weigh accurately~~ conduct an accurate weighing for producing weight certificates;
  2. Has ~~not correctly made~~ produced an incorrect, inaccurate, or falsified weight certificates certificate;
  3. Has been found to ~~have violated~~ violate any provision of A.R.S. Title 3, Chapter 19, or this Chapter;
  - ~~4. Has falsified a weight certificate;~~
  - ~~5-4.~~ Has delegated authority to someone other than a licensed public weighmaster or deputy public weighmaster;
  - ~~6-5.~~ Has improperly used a public weighmaster's seal of authority Seal of Authority;
  - ~~7-6.~~ Has ~~presigned~~ pre-signed certificates for later use;
  - ~~8-7.~~ Has issued a weight certificate on which changes or alterations were made; or
  - ~~9-8.~~ Has used a scale for public weighing that is not properly licensed.

### **R3-7-504. Scales and Vehicle Weighing**

- A. When making a weight determination, a public weighmaster shall use a ~~weighing device~~ scale that is suitable for the function.
- B. The public weighmaster shall not use a scale to weigh a load that exceeds the normal or rated capacity of the scale.
- C. The owner or user of a ~~weighing device~~ scale is responsible for the accuracy of the ~~device~~ scale used by a public weighmaster. The owner or user shall comply with Handbook 44.
- D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.
- E. The Division shall separately license and regulate each scale location.
- F. A public weighmaster or deputy public weighmaster shall weigh any vehicle or combination of vehicles on a scale having a platform that fully accommodates the vehicle or combination of vehicles as one unit.
- G. If a combination of vehicles is divided into separate units to be weighed, each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

### **R3-7-505. Weight Certificates**

- A. In issuing a weight certificate, a public weighmaster shall enter only ~~those weight values~~ information or other required information that the public weighmaster or deputy public weighmaster has accurately and personally determined.
- B. A public weighmaster or deputy public weighmaster shall not make any entries on a weight certificate issued by another person.
- C. By signing a weight certificate, a public weighmaster or ~~the weighmaster's~~ deputy public weighmaster shall be responsible for the accuracy of all entries on the weight certificate.
- D. ~~A weight certificate is valid only when properly signed and sealed by the issuing public weighmaster or the deputy public weighmaster. The name and image of the seal of the public weighmaster and deputy public weighmaster may be imprinted electronically on the weighmaster certificate in lieu of a handwritten signature and embossed seal if the electronically imprinted name and seal is that of the weighmaster or deputy public weighmaster who weighed, measured, or counted the commodity. To issue an electronic signature or seal, the weighmaster or deputy public weighmaster shall have an individual login associated with the electronic signature and seal or other security measures in place to prevent non-licensed persons from use. A weight certificate is valid only when marked with the Seal of Authority and signed by the issuing public weighmaster or deputy public weighmaster.~~
- E. ~~A Seal of Authority may be printed electronically on a weight certificate if it is identical in appearance to the Seal of Authority issued by the Division.~~
- F. ~~A public weighmaster or deputy public weighmaster's signature may be printed electronically on the weight certificate in lieu of a handwritten signature if the electronic signature is that of the public weighmaster or deputy public weighmaster who weighed the commodity. To issue a weight certificate with an electronic Seal of Authority and signature, the public weighmaster or deputy public~~

weighmaster shall have an individual login associated with the electronic Seal of Authority and signature or other security measures in place to prevent unauthorized persons from use.

**E.G.** If an error is made on a weight certificate, the public weighmaster or deputy public weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a weight certificate.

**F.H.** A weight certificate shall state:

1. The date of issuance;
2. The name of the declared owner, agent, or consignee of the material weighed;
3. The accurate weight of the material weighed or counted;
4. The means by which the material is being transported at the time it is weighed or counted;
5. An identification The license plate number of the transporting unit, including a license number; and
6. The printed name, signature, and license number of the public weighmaster or deputy public weighmaster issuing the weight certificate; and
- ~~6-7.~~ The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the described merchandise was weighed, counted, or measured by a public or deputy public weighmaster, and when properly signed and sealed, is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law."
- ~~7.~~ The printed name, signature, and license number of the public weighmaster or deputy public weighmaster issuing the weight ticket.

**G.I.** A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of one year. A public weighmaster ~~also~~ shall also ensure that weight certificates are consecutively numbered and filed numerically, including ~~voids~~ voided weight certificates. A public weighmaster shall not use another filing system without Division approval.

**H.J.** A public weighmaster is liable for any forged signatures physical, printed, or electronic signatures.

### **R3-7-506. Seal of Authority**

- A. A public weighmaster shall obtain a ~~seal~~ Seal of Authority for the certification of weight certificates at cost through the Division.
- B. The Division shall assign a number to a ~~seal~~ Seal of Authority that identifying identifies the specific location for which the ~~seal~~ Seal of Authority is issued.
- C. A ~~seal~~ Seal of Authority is the property of the state. A public weighmaster shall surrender ~~a seal~~ their assigned Seal of Authority to the Division within 30 days after the public weighmaster no longer operates as a licensed public weighmaster if the ~~seal~~ Seal of Authority contains the public weighmaster's name. If the ~~seal~~ Seal of Authority was issued under R3-7-506(B) and only contains the location identification number, it may be retained for use by the next licensed public weighmaster at the location if it is still legible. Illegible seals or seals used in violation of an administrative order shall be ~~surrendered to~~ seized by the Division.
- D. A public weighmaster shall have one ~~seal~~ Seal of Authority for use at each scale location.
- E. A ~~seal~~ Seal of Authority shall be accessible to the public weighmaster and authorized ~~deputies~~ deputy public weighmasters during all business hours at the scale location for the timely and proper certification of weight certificates.
- F. A public weighmaster shall keep a ~~seal of authority~~ Seal of Authority at each scale location and make it available for inspection by the Division during all business hours.
- G. A public weighmaster may recreate the ~~state assigned seal~~ Seal of Authority assigned by the Division in an electronic format for use as provided under ~~subsection R3-7-505(D)~~ R3-7-505(E) and (F). The Division shall provide a template of ~~seal~~ the Seal of Authority.

### **R3-7-507. Prohibited Acts**

- A. A person shall not:
  1. Issue a certified weight certificate without being a licensed public weighmaster or a ~~person properly~~ deputy public weighmaster authorized to act for a public weighmaster;
  2. Procure, print, or cause to be printed any public weighmaster weight certificate without being a licensed public weighmaster or a deputy public weighmaster authorized to act for a public weighmaster;
  3. Possess unfilled or unused ~~public weighmaster weight certificate forms~~ certificates without being a licensed public weighmaster or a deputy public weighmaster authorized to act for a public weighmaster;
  4. Furnish or give false information to a public weighmaster or deputy public weighmaster for use in the completion of a weight certificate;
  5. Present a weight certificate for payment falsified by the insertion of any weight, measure, or count not determined by the issuing public weighmaster;
  6. Use without authorization the title "licensed public weighmaster" or any similar title; represent oneself to be a public weighmaster without holding a license issued by the Division; or engage in public weighing without holding a valid license as a public weighmaster or a deputy public weighmaster authorized to act for a public weighmaster; or
  - ~~7.~~ Represent oneself to be a public weighmaster without holding a license issued by the Division;
  - ~~8.~~ Engage in public weighing without holding a valid license as a public weighmaster, or acting under the authority of a licensed public weighmaster;
  - ~~9-7.~~ Use an unlicensed scale in the performance of public weighmaster duties; or,
  - ~~10.~~ Operate a scale for public weighing unless that person is licensed as a public or deputy public weighmaster.

~~11. Nothing in this subsection shall be construed to prevent administrative staff of the public or deputy public weighmaster from performing administrative duties such as filing weight tickets.~~

**B.** ~~Nothing in subsection (A) shall be construed to prevent administrative staff of the public weighmaster or deputy public weighmaster from performing administrative duties such as filing weight certificates.~~

**B.C.** People engaged in the business of printing weight certificate forms, their representatives, and the Division are exempt from the prohibitions specified in subsections (A)(2) and (3).

## ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

### R3-7-601. Qualifications; License and Renewal Application Process

**A.** Registered service agency.

1. To obtain a license as a registered service agency, an applicant shall provide evidence that:

- a. The applicant's registered service representative has a thorough knowledge of all appropriate laws within A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter;
  - b. The applicant provided its representative with a copy of the portions of A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter relating to registered service representative duties;
  - c. The applicant:
    - i. Possesses the necessary certified field calibration standards to service commercial devices that meet the requirements of A.R.S. § 3-3416 for installing, repairing, or servicing commercial devices; and
    - ii. Possesses the necessary vapor recovery test equipment calibrated in the time-frame required by the equipment manufacturer or CARB Executive Orders to perform the required testing of a vapor recovery system or vapor recovery component properly; or
    - iii. Has pre-filed with the Division documentation that the applicant has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and:
      - (a) Access to the necessary field calibration standards and vapor recovery test equipment belonging to another registered service agency;
      - (b) Written approval from that registered service agency to use its field calibration standards and vapor recovery test equipment;
      - (c) Documentation supporting that the field calibration standards meet the requirements of A.R.S. § 3-3416(F); and
      - (d) Documentation supporting that the vapor recovery test equipment meets the calibration requirements established by the CARB test procedure or this Chapter.
  - d. The applicant shall ensure that its registered service representative operates the field calibration standards and vapor recovery test equipment according to A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter.
2. The Division shall not issue a registered service agency license until at least one of the applicant's employees passes a registered service representative competency exam.
3. An applicant for a registered service agency license shall submit an application form, obtained from the Division that provides:
- a. Name, address, telephone number, ~~electronic mail, and facsimile number~~ and e-mail address;
  - b. License information from other states;
  - c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
  - d. A list of all of the applicant's ~~devices and testing~~ field calibration standards and vapor recovery test equipment with corresponding serial or identification numbers;
  - e. Branch office information;
  - f. Names of registered service representatives and their experience with other registered service agencies or states;
  - g. License and disciplinary history; and
  - h. Applicant's signature.

~~**B.** Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the Division with evidence that the third-party registered service agency:~~

- ~~1. Holds a valid license issued by the Arizona Registrar of Contractors;~~
- ~~2. Complies with workers' compensation insurance laws; and~~
- ~~3. Maintains liability insurance sufficient to cover the value of work to be performed.~~

**C.B.** Registered service representative.

1. To obtain a license as a registered service representative, an applicant shall provide evidence that:

- a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter;
- b. The applicant possesses the necessary training or experience regarding appropriate field calibration standards and testing vapor recovery test equipment to service the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application; and

- ~~e. The applicant will operate according to appropriate laws within A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, and this Chapter; and~~
- ~~d.c.~~ The applicant has passed the competency examination specified in subsection (D).
2. An applicant for a registered service representative license shall submit an application on a form obtained from the Division that provides:
    - a. Name, address, telephone number, and ~~facsimile number~~ e-mail address;
    - b. License information from other states;
    - c. An indication of whether the applicant is applying to be a registered service representative or a vapor recovery registered service representative;
    - d. ~~Types~~ A summary of the types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
    - e. Work experience with other registered service agencies in Arizona or other states;
    - f. License and disciplinary history; and
    - g. Applicant's signature.
  3. An applicant for a vapor recovery registered service representative license shall maintain and make available to the Division upon request evidence of being certified by the manufacturer to test or repair all vapor recovery systems and components;
    - ~~a. Certified by the manufacturer to test or repair all vapor recovery systems and components, or~~
    - ~~b. Determined qualified by the Division to test or repair all vapor recovery systems and components.~~
  4. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. § 41-1080.
- D.** Competency examination. Before being an applicant is issued a registered service representative license, ~~an~~ the applicant shall pass a Division-administered competency examination.
1. An applicant for a vapor recovery registered service representative license shall complete the Division's training class before taking the competency examination. The Division may waive the training class requirement for up to 12 months for new applicants.
  2. An applicant shall bring a copy of Handbook 44 to the examination site. An applicant for a vapor recovery registered service representative license shall additionally bring copies of CARB test procedures, Executive Orders, and Division Standard Operating Procedures.
  3. An applicant shall complete the competency examination within the time specified by the Division and pass with a score of ~~75~~ percent 75% or greater.
  4. The Division shall not allow an applicant to take the competency examination more than three times in six months and the applicant must wait seven days prior to retaking the exam.
  5. The associate director may contract with a third-party testing company to administer testing competency examinations to provide added convenience to registered service ~~representatives~~ representative applicants. Taking exams through ~~the third-party~~ a third party is optional and the registered service representative shall be responsible for payment of any additional costs related to third-party testing.
- E.** As required under A.R.S. § 3-3454(G), the Division shall specify on a registered service representative license the ~~devices~~ type of service that the registered service representative ~~may or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the Division for the registered service representative service, repair, or install is approved to perform.~~
- F.** Renewal of a registered service representative license. Under A.R.S. § 3-3454(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall ~~comply with R3-7-603(E) submit the renewal fee for the agency license and the agency's registered service representative licenses by the first day of the month that each license expires. Before complying with R3-7-603(E), submitting the renewal fee,~~ the registered service agency shall ensure that once every 36 months a vapor registered service representative completes the Division's training class and takes and passes the Division's written vapor recovery competency examination.
- G.** A registered service agency licensee shall notify the Division of a change in business name or address within 30 days of the change. The Division does not charge a fee to process a change in business name or address.
- H.** Change of business ownership requires application for a new license. Existing registered service representatives may move their license to a new registered service agency without being subject to the requirements in Subsection (D).

**R3-7-602. Duties**

- A.** Registered service agency.
1. A registered service agency shall:
    - a. Maintain all ~~equipment~~ field calibration standards used for commercial device certification according to standards traceable to NIST; ~~and;~~
    - b. Use the appropriate type and quantity of field calibration standards when testing, repairing, or certifying a commercial device according to A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter; and
    - ~~b.c.~~ Maintain and use ~~equipment for testing vapor recovery systems and~~ vapor recovery test equipment ~~system components~~ according to this Chapter, CARB test procedures, and manufacturer specifications.

2. When a registered service agency restores or newly places ~~in service~~ a commercial device into service, or restores a commercial device into service as the result of an Out-of-Service or Stop-Sale, Stop-Use tag, or an administrative order, the registered service agency shall complete a placed-in-service report form prescribed by the Division.
  - a. Within seven ~~calendar~~ days after the commercial device is ~~restored to service or~~ newly placed ~~in~~ into service or restored into service, the registered service agency shall complete an online placed-in-service report to the Division. If an online placed-in-service report is not available for the device, a paper report shall be submitted;
  - b. The registered service agency shall ~~give~~ provide a copy of the placed-in-service report to the person who owns or operates the commercial device;
  - c. The registered service agency shall retain a copy of the placed-in-service report ~~or any required vapor recovery report~~ for one year;
  - d. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who installs or ~~repairs~~ restores the commercial device and completes the report;
  - e. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each ~~rejected~~ commercial device ~~restored to service and each~~ newly installed ~~device placed in or restored into service; and~~
  - f. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each field calibration standard used by the registered service representative to calibrate ~~the commercial device for each rejected device restored to service and for each newly installed device placed in service; and each commercial device newly installed or restored to service.~~
3. A registered service agency shall have all ~~equipment used for commercial device certification~~ field calibration standards certified annually ~~by the manufacturer as required under A.R.S. § 3-3416.~~ Vapor recovery test equipment shall be certified as required by the CARB test procedure or this Chapter.
4. A registered service agency shall not use a new ~~equipment for commercial device certification~~ field calibration standard until it is certified ~~by a NIST traceable laboratory as required under A.R.S. § 3-3416.~~
5. A registered service agency shall ensure that ~~employees do~~ its employee does not perform registered service representative duties until ~~licensed~~ the Division licenses the employee as a registered service representative. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.
6. A registered service agency shall use a form approved by the Division to record vapor recovery test results and violations. The test results shall be e-mailed to the Division within seven days after completion of the test.
7. A registered service agency shall retain a copy of a required vapor recovery test report for a period of one year.
- ~~7.8.~~ A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, at least ~~5~~ five business days before an initial or annual test.

**B. Registered service representative.**

1. A registered service representative shall:
  - a. Perform only the type of service that they are approved by the Division to perform;
  - ~~a.b.~~ Install only commercial devices that meet the requirements of this Chapter;
  - ~~b.c.~~ Perform all vapor recovery tests according to this Chapter;
  - ~~c.d.~~ Perform all appropriate tests before a commercial device is placed in service, including when repairing a commercial device or repairing or replacing a vapor recovery system or component is newly installed or restored to service, to ensure that the requirements of A.R.S. Title 3, Chapter 19, this Chapter, Handbook 44, ~~and CARB Executive Orders~~ are met;
  - ~~c.e.~~ Perform all appropriate tests when installing, repairing, or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title 3, Chapter 19, this chapter, and CARB Executive Orders are met;
  - ~~d.f.~~ Report to the user equipment or commercial devices that do not conform to NIST standards; ~~and~~
  - ~~e.g.~~ Complete placed-in-service reports accurately;:
  - ~~e.h.~~ Obtain and keep current, during the term of the registered service representative license, all required federal, state, and local licenses and ensure compliance with all federal, state, and local laws, rules, regulations, and policies governing the occupation of a registered service representative.
- ~~f.2.~~ A registered service representative shall Report report to the Division within one hour by e-mail or phone telephone of finding a device that is not certified as part of the NTEP Certificate of Conformance under R3-7-203(A) and is installed to fraudulently obtain motor fuel or consumer credit payment card information; and Additionally, the registered service representative shall contact the local law enforcement agency for collection of the device as evidence;.
- ~~2.3.~~ If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by ~~R3-7-910~~ R3-7-1010. The registered service representative shall notify the Division of the ~~stop-sale, stop-use~~ secured, non-compliant vapor recovery system or component prior to leaving the site. The registered service representative shall notify the Division regarding retest of the site by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Division may witness the test.

**R3-7-603. Grounds for Denying License or Renewal; ~~Suspension, Revocation, or Other Disciplinary Action, and Certification of Standards and Testing Equipment~~**

- ~~A. The Division shall not issue a license or renewal until an applicant pays all appropriate fees. The Division may deny a license or renewal, suspend or revoke a license, or impose other discipline, for any of the following reasons:~~
- ~~1. Providing false or misleading information;~~
  - ~~2. Failure to meet annual certification requirements for field calibration standards or vapor recovery test equipment;~~
  - ~~3. Failure to pay required fees;~~
  - ~~4. Violating any requirements stated in A.R.S. Title 3, Chapter 19, or this Chapter.; or~~
  - ~~5. If an applicant, registered service agency, or registered service representative is not qualified to perform the duties of a registered service representative or registered service agency.~~
- ~~B. Upon receipt and acceptance of all required documents, fees, and Division certification of standards, the Division shall issue the agency a license or renewal.~~
- ~~C. The Division shall include on a license an assigned number, that remains effective until either withdrawn by the Division or until it expires. The Division shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.~~
- ~~D. Neither a registered service agency nor a registered service representative shall transfer a license.~~
- ~~E. A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.~~
- ~~F. The Division may deny a license or renewal for any of the following reasons:~~
- ~~1. Providing false or misleading information;~~
  - ~~2. Failure to meet annual certification requirements for standards or testing equipment;~~
  - ~~3. Failure to meet the requirements stated in this Article; or~~
  - ~~4. For any reason that would be grounds for suspension, revocation, or refusal to renew.~~
- ~~G. The Division may suspend, revoke, or refuse to renew a license if the applicant is not qualified to perform those duties required or has been found to have violated any provision of A.R.S. Title 3, Chapter 19, or this Chapter.~~
- ~~H. Every registered service agency and representative shall comply with the Division's metrology laboratory annual schedule for certification of field standards contained in A.R.S. § 3-3416(F).~~

**R3-7-604. Prohibited Acts**

- A. A person shall not:
1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service agency or registered service representative license issued by the Division;
  2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
  3. Remove an official ~~out-of-service, warning, or stop-sale, stop-use~~ Out-of-Service or Stop-Sale, Stop-Use tag except as authorized in this Chapter, or by the Division.
- B. A registered service agency or registered service representative shall not:
1. Fraudulently complete or file ~~a~~ an incomplete placed-in-service report;
  2. Delegate licensed authority or responsibility to an unlicensed person;
  3. Perform a function without certified field calibration standards or vapor recovery test equipment;
  4. ~~Install or place in service a~~ Newly install or restore a commercial device into service before satisfying all ~~of the statutory and rule~~ requirements of A.R.S. Title 3, Chapter 19, or this Chapter;
  5. Fail to report a commercial device to the Division that is found to be out of compliance under R3-7-602;
  6. ~~Install, calibrate, or repair~~ Calibrate a commercial device without placing a decal or label on the device as prescribed by the associate director;
  7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
  8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from ~~commercial~~ use.

**R3-7-605. Material Incorporated by Reference Repealed**

~~The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments:~~

- ~~1. California Air Resources Board Executive Order G-70-17-AD, Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System, May 6, 1993, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~2. California Air Resources Board Executive Order G-70-36-AD, Modification of Certification of the OPW Balance Phase II Vapor Recovery System, September 18, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

- ~~3. California Air Resources Board Executive Order G-70-52-AM, Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery Systems, October 4, 1991, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~4. California Air Resources Board Executive Order G-70-70-AC, Modification of Certification of the Healy Phase II Vapor Recovery System for Gasoline Dispensing Facilities, June 23, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~5. California Air Resources Board Executive Order G-70-150-AE, Modification to the Certification of the Mareoni Commerce Systems Inc. (MCS) "Formerly Gibarco" VaporVac Phase II Vapor Recovery System, July 12, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~6. California Air Resources Board Executive Order G-70-153-AD, Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System, April 3, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~7. California Air Resources Board Executive Order G-70-154-AA, Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System, June 10, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~8. California Air Resources Board Executive Order G-70-163-AA, Modification to the Certification of the OPW VaporEZ Phase II Vapor Recovery System, September 4, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~9. California Air Resources Board Executive Order G-70-164-AA, Modification to Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System, December 10, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~10. California Air Resources Board Executive Order G-70-165, Certification of the Healy Vacuum Assist Phase II Vapor Recovery System with the Model 600 Nozzle, April 20, 1995, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~11. California Air Resources Board Executive Order G-70-169-AA, Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System, August 11, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~12. California Air Resources Board Executive Order G-70-177-AA, Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System, December 9, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~13. California Air Resources Board Executive Order G-70-180, Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities, April 17, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~14. California Air Resources Board Executive Order G-70-183-AA, Relating to Language Correction in Existing Executive Order G-70-183 (Healy Systems, Inc.), June 29, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~15. California Air Resources Board Executive Order G-70-186, Certification of the Healy Model 400 ORVR Vapor Recovery System, October 26, 1998, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~16. California Air Resources Board Executive Order G-70-188, Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System, May 18, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~17. California Air Resources Board Executive Order G-70-191-AA, Relating to Language Correction in Existing Executive Order G-70-191 (Healy Systems, Inc.), July 30, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
- ~~18. California Air Resources Board Executive Order G-70-196, Certification of the Saber Technologies, LLC Saber-Vac VR Phase II Vapor Recovery System, December 30, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

## **ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS**

### **R3-7-701. Definitions**

In addition to the definitions in A.R.S. § 3-3401 and R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

1. "Address" means a street number, street name, city, state, and zip code.
- ~~— "Approved oxygenate" means an oxygenate not prohibited by A.R.S. 3-3491(E).~~
- ~~— "Area A" has the same meaning as in A.R.S. § 3-3401.~~
- ~~— "Area B" has the same meaning as in A.R.S. § 3-3401.~~
- ~~— "Area C" has the same meaning as in A.R.S. § 3-3401.~~

2. ~~“Arizona Cleaner Burning Gasoline” or “Arizona CBG” means Arizona cleaner burning gasoline and is a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § 3-3493(H) §§ 3-3493(I) and 3-3494(H).~~  
~~“AST” means aboveground storage tank.~~
3. “AZRBOB” ~~or means~~ “Arizona Reformulated Blendstock for Oxygenate Blending” ~~means and is~~ a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of an ~~approved~~ oxygenate ~~not prohibited by A.R.S. § 3-3491(E)~~ after the blendstock is supplied from the facility at which it was produced or imported.
4. “Batch” means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.  
~~“Beginning of transport” means the point at which:  
A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third party terminal; or  
A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.~~
5. “Biodiesel” has the same meaning as prescribed under A.R.S. § 3-3401.
6. “Biodiesel blend” has the same meaning as prescribed under A.R.S. § 3-3401. Per ASTM D975, diesel fuel may contain ~~5 percent~~ 5% or less biodiesel and is not considered to be a biodiesel blend.
7. “Biofuel” has the same meaning as prescribed under A.R.S. § 3-3401.
8. “Biofuel blend” has the same meaning as prescribed under A.R.S. § 3-3401.
9. “Biofuel blender” means a person that modifies a motor fuel by adding a biofuel.
10. “Biofuel producer” means a person that owns, leases, operates, controls, or supervises a facility at which biofuel is produced.
11. “Biofuel Supplier” means a marketer or jobber of a biofuel or biofuel blend.
12. “Biomass” has the same meaning as prescribed under A.R.S. § 3-3401.
13. “Biomass-based diesel” has the same meaning as prescribed under A.R.S. § 3-3401.
14. “Biomass-based diesel blend” has the same meaning as prescribed under A.R.S. § 3-3401.
15. “Blendstock” means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.  
~~“CARB” means the California Air Resources Board.~~
16. “CARBOB Model” means the ~~requirements and~~ procedures incorporated by reference in ~~R3-7-702(11) R3-7-702(12) and (13).~~  
~~“CARB Phase 2 gasoline” means gasoline that meets the specifications incorporated by reference in R3-7-702(8).~~
17. “CBG Blender” means ~~a person that owns, leases, operates, controls, or supervises any facility, other than a refinery or transmix processing facility, where AZRBOB or Arizona CBG is produced by combining blendstocks or by combining blendstocks with fuel. Types of blending facilities include, but are not limited to, terminals, storage tanks, plants, tanker trucks, retail outlets, and marine vessels.~~
18. “CBG-covered area” means ~~a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A:~~  
~~a. A county with a population of 1,200,000 or more persons according to the most recent United States decennial census;~~  
~~b. Any portion of a county within area A; and~~  
~~c. Any portion of a county within area C from June 1 through September 30 of each year.~~
19. “Conventional gasoline” means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.
20. “Diesel fuel” or “Diesel” has the same meaning as prescribed under A.R.S. § 3-3401. Per ASTM D975, diesel fuel may contain ~~5 percent~~ 5% or less biodiesel.
21. “Duplicate” means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.
22. “E15” means ~~gasoline that contains more than 10 and no more than 15 volume percent ethanol.~~  
~~“EPA” means the United States Environmental Protection Agency.~~
23. “EPA waiver” means a waiver granted by ~~the Environmental Protection Agency~~ EPA as described in “Waiver Requests under Section 211(f) of the Clean Air Act,” which is incorporated by reference in R3-7-702 ~~(6)~~.
24. “Ethanol” means ~~an alcohol of the chemical formula C2H5OH. Ethanol is provided in gasoline-ethanol blends by blending denatured fuel ethanol.~~
25. “Ethanol flex fuel” has the same meaning as prescribed under A.R.S. § 3-3401.
26. “Final destination” means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.
27. “Final distribution facility” means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be

or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

28. "Fleet" means at least 25 motor vehicles owned or leased by the same person.
29. "Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.
30. "Fuel ethanol" means denatured ethanol that meets the requirements in ASTM D4806, which is incorporated by reference in R3-7-702(4).
31. ~~"Fuel property" means any characteristic listed in R3-7-751(A)(1) through (8), R3-7-751(B)(1) through (7), R3-7-751(D), or any other motor fuel standard referenced in this Article.~~
32. "Gasoline" has the same meaning as prescribed under A.R.S. § 3-3401.
33. "Isobutanol" means butanol isomer 2-methyl-1-propanol that meets the requirements in ASTM D7862, which is incorporated by reference in R3-7-702(9).
34. "Jobber" means a person that distributes a motor fuel from a bulk storage plant or terminal to the owner or operator of a UST ~~or AST~~ ~~an underground or above-ground storage tank~~ ~~or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.~~
- ~~"Manufacturer's proving ground" has the same meaning as prescribed under A.R.S. § 3-3401.~~
35. "Marketer" means a person engaged in selling or offering for sale motor fuels.
36. "Motor Fuel" has the same meaning as prescribed under A.R.S. § 3-3401.
37. "Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.
- ~~"Motor fuel property" means any characteristic listed in R3-7-751(A)(1) through (7), R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.~~
38. "Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:  
A vehicle that runs on or is guided by rails, or  
A vehicle designed primarily for travel through air or water.
- ~~"Motor vehicle racing event" has the same meaning as prescribed under A.R.S. § 3-3401.~~
39. "MTBE" means methyl tertiary butyl ether.
40. "Neat" means pure or ~~100 percent~~ 100%.
41. "NOx" means oxides of nitrogen.
42. ~~"Octane," "octane number," "Octane" or "octane rating"~~ mean means the anti-knock characteristic of gasoline as determined by the ~~resultant~~ resulting arithmetic test average of ASTM D2699 and ASTM D2700.
43. "Oxygenate" has the same meaning as prescribed under A.R.S. § 3-3401.
44. "Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.
45. "Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.
46. "Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.
47. ~~"PM" means predictive model.~~
48. ~~"Predictive Model Procedures" means CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995.~~
49. ~~"Premium Diesel diesel"~~ means a diesel fuel meeting the requirements in ASTM D975 and in Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section ~~2.2.1(a) through 2.2.1(d)~~ 2.2.1(a) through 2.2.1(f).
50. "Producer" means a refiner, CBG blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.
51. "Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the associate director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:
- a. Is owned or leased by the producer;
  - b. Is operated by or at the direction of the producer; and
  - c. Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.
52. "Product transfer document" has the same meaning as prescribed under A.R.S. § 3-3401.
53. "Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.
54. "Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.
55. "Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.
56. "Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

57. "Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not necessarily ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter or another terminal.
58. "Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.
59. "Transferee" means a person that receives title to or custody of a motor fuel.
60. "Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.
61. "Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.
62. "Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.
63. "Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.
- ~~"UST" means underground storage tank.~~
64. "Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.
- ~~"Vehicle emissions control area" has the same meaning as prescribed under A.R.S. § 3-3401.~~
65. "VOC" means volatile organic compound.

### R3-7-702. Material Incorporated by Reference

~~A.~~—The following documents are incorporated by reference and on file with the Division. The documents incorporated by reference contain no future editions or amendments.

- 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, ~~January 14, 2016~~ December 8, 2021 Edition, Government Publishing Office, 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov (herein referred to as "16 CFR 306").
- API Recommended Practice 1637 (API RP 1637), "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals," 4th edition published ~~July 2006~~, Reaffirmed May 2012 April 2020, American Petroleum Institute (API), ~~6300 Interfirst Drive, Ann Arbor, MI, 48108~~ 200 Massachusetts Avenue NW Suite 1100, Washington, DC, 20001-5571 (herein referred to as "API 1637").
- ASTM Standard ~~D975, 2016a (ASTM D975-16a);~~ D975-21, "Standard Specification for Diesel Fuel Oils," published ~~2016~~ 2021, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as "ASTM D975").
- ASTM Standard ~~D4806, 2016a (ASTM D4806-16a);~~ D4806-21a, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published ~~2016~~ 2021, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as "ASTM D4806").
- ASTM Standard ~~D4814, 2016cc1 (ASTM D4814-16cc1);~~ D4814-21c, "Standard Specification for Automotive Spark-Ignition Engine Fuel," published ~~2016~~ 2021, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as "ASTM D4814").
- Waiver Requests under Section 211(f) of the Clean Air Act, (~~August 22, 1995~~ Document EPA-420-B-19-054, October 2019 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460 (herein referred to as "Section 211(f) of the Clean Air Act").
- ASTM Standard ~~D5798, 2015 (ASTM D5798-15);~~ D5798-21, "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines," published ~~2015~~ 2021, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as "ASTM D5798").
- ASTM Standard ~~D6751, 2015ee1 (ASTM D6751-15ee1);~~ D6751-20a, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published ~~2015~~ 2020, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as "ASTM D6751").
- ASTM Standard ~~D7862, 2017 (ASTM D7862-17);~~ D7862-21, "Standard Specification for Butanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel," published ~~2017~~ 2021, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as "ASTM D7862").
- California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov (herein referred to as "PM" or "Predictive Model Procedures").
- The Federal Complex Model contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government Publishing Office, 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov (herein referred to as "Federal Complex Model").
- California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

13. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
14. ASTM Standard ~~D7467, 2015e01 (ASTM D7467-15e01), D7467-20a~~, “Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20),” published ~~2015~~ 2020, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as “ASTM D7467”).
15. SAE International, SAE J285, “Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines,” published ~~May 5, 2012~~ April 2019, SAE International, 400 Commonwealth Drive, Warrendale, PA ~~15096-0001~~ 15096 or www.sae.org (herein referred to as “SAE J285”).
16. ASTM Standard D4057-19, “Standard Practice for Manual Sampling of Petroleum and Petroleum Products,” published 2019, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as “ASTM D4057”).
17. NIST Handbook 158, Field Sampling Procedures for Fuel and Motor Oil Quality Testing, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (April 2016), incorporated by reference and on file with the Division (herein referred to as “Handbook 158”). This incorporation by reference contains no future editions or amendments.
18. ASTM Standard D2699-21, “Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel,” published 2021, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as “ASTM D2699”).
19. ASTM Standard D2700-22, “Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel,” published 2022, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as “ASTM D2700”).
20. ASTM Standard D7717-11(Reapproved 2021), “Standard Practice for Preparing Volumetric Blends of Denatured Fuel Ethanol and Gasoline Blendstocks for Laboratory Analysis,” published 2021, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org (herein referred to as “ASTM D7717”).
21. American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapters 3.1A (Third Edition, August 2013, Reaffirmed December 2018) and 3.1B (Fourth Edition, October 2021), American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070 (herein referred to as “API Manual of Petroleum Measurement Standards”).

~~B. Subsection (A)(11) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.~~

**R3-7-703. ~~Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers~~ Return of Motor Fuels Collected During Volumetric Inspection**

- ~~A. After completing an inspection, and if made possible by the motor fuel dispensing site owner or operator, the Division shall return all motor fuel to the owner or operator of a motor fuel dispensing site at the site where the Division collected the motor fuel collected during the volumetric inspection of motor fuel dispensers to the location where the inspection occurred.~~
- ~~B. After completing an inspection, if a motor fuel cannot be returned to the owner or operator of a motor fuel dispensing site at the site where the Division collected the motor fuel, the Division shall transport the motor fuel to another site of the owner or operator's choice and within a 20-mile radius of the inspection site.~~

**R3-7-704. ~~Motor Fuel Dispensing Site Price and Grade Posting on External Signs~~**

- ~~A. A person who owns or operates a motor fuel dispensing site that has an external sign shall ensure that the sign: Any roadside or other sign, including, but not limited to, prices on poles, monument signs, canopies, ‘A-frame’ signs, or other structures, that advertises or displays motor fuel prices and is not connected to a motor fuel dispenser shall comply with subsections (1) through (4) of this Section, and shall comply with either method listed in subsections (5) and (6):~~
- ~~1. Identifies whether the price differs depending on whether the payment is cash, credit, or debit;~~
  - ~~2. Identifies the self-service and full-service prices, if different;~~
  - ~~3. Discloses the full price of motor fuel including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;~~
  - ~~4. Displays lettering at a height of at least 1/5 of the letter height of the motor fuel price displayed on the external sign or 2 1/2", whichever is larger, and is visible from the road;~~
  - ~~5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection (A)(4);~~
  - ~~6. Describes the motor fuel that meets ASTM D975 as No. 1 Diesel, #1 Diesel, No. 2 Diesel, #2 Diesel, or premium diesel. Describes other fuel for use in compression ignition engines as biodiesel, or biodiesel blend. Diesel fuel No. 2 may be labeled on dispensers as diesel fuel without indication of the fuel grade;~~
  - ~~7. Describes motor fuel with an ethanol concentration of 51 to 83 volume percent as ethanol flex fuel;~~
  - ~~8. Identifies the unit of measure of the price, if it is other than per gallon; and~~
  - ~~9. Sites that sell Ethanol Flex Fuel previously labeled as “E-85” shall update the signage to reflect the sale of Ethanol Flex Fuel no later than January 1, 2018. In no case shall signage with an incorrect ethanol content be advertised at the motor fuel dispensing site.~~

1. Display the self-service and full-service prices, if different;
2. Display the unit of measure of the price if other than per gallon;
3. Display fractions of a cent, if the fuel price is not charged at a whole cent; and
4. Display a decimal point when a dollar sign precedes the posted price.
5. Display the undiscounted price for any motor fuel product and applicable grade advertised; or
6. Display the discounted price for any motor fuel product and applicable grade advertised along with the conditions under which the discount is available, including, but not limited to, "Cash", "Cash Only", or "Membership."
  - a. Any discount conditions must be clearly presented on a sign in a font no less than 1/5 the size of the largest number posted on the sign or 2 1/2 inches, whichever is larger, and may not be abbreviated.
  - b. The discount conditions must appear immediately next to, above or below the discounted price and with equal illumination as the discounted price.

**B.** All motor fuel prices displayed must include all applicable federal and state taxes.

**C.** Motor fuel Descriptions, Motor fuel types, grades, and blends shall be described on signs listed in Subsection (A) as indicated in the following table:

<u>Motor Fuel Type</u>	<u>ASTM Standard</u>	<u>Fuel Properties</u>	<u>Allowable Description</u>
<u>Diesel</u>	<u>D975</u>	<u>Min. flash point 38° C Min. viscosity 1.3 mm<sup>2</sup>/S,</u> <u>max. 2.4 mm<sup>2</sup>/S</u>	<u>No. 1 Diesel, #1 Diesel, Diesel No. 1, or Diesel #1</u>
		<u>Min. flash point 52° C Min. viscosity 1.9 mm<sup>2</sup>/S,</u> <u>max. 4.1 mm<sup>2</sup>/S</u>	<u>No. 2 Diesel, #2 Diesel, Diesel No. 2, Diesel #2, or Diesel</u>
	<u>D975 or D7467</u>	<u>Meets definition of Premium Diesel in R3-7-101</u>	<u>Premium Diesel</u>
	<u>D7467</u>	<u>More than 5 and no more than 20 volume percent biodiesel</u>	<u>Biodiesel Blend or B-20 Biodiesel Blend</u>
<u>Ethanol Flex Fuel</u>	<u>D5798</u>	<u>51-83 volume percent ethanol</u>	<u>Ethanol Flex Fuel</u>
<u>Gasoline</u>	<u>D4814</u>	<u>Minimum 87 octane</u>	<u>Regular, Reg, Unleaded, UNL, or UL</u>
		<u>Minimum 89 octane</u>	<u>Midgrade, Mid, or Plus</u>
		<u>Minimum 91 octane</u>	<u>Premium, Prem, Super, Supreme, High, or High Performance</u>
		<u>Contains more than 10 but no more than 15 volume percent ethanol</u>	<u>E15</u>

A person may use an alternative to the descriptions provided in subsection (C) upon receipt of written approval by the associate director.

**B.** For the following terms used on a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index as determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method:

<u>Term</u>	<u>Minimum Antiknock Index</u>
<u>1. Regular, Reg, Unleaded, UNL, or UL</u>	<u>87</u>
<u>2. Midgrade, Mid, or Plus</u>	<u>89</u>
<u>3. Premium, PREM,</u> <u>Super, Supreme, High,</u> <u>or High Performance</u>	<u>91</u>

**C.** A person may use an alternative to the descriptions provided in subsection (B) upon receipt of written approval by the associate director.

**R3-7-705. Dispenser Labeling at Motor Fuel Dispensing Sites**

**A.** The owner or operator of a motor fuel dispensing site shall label dispensers in accordance with the following provisions:

**A.** Pricing pricing, motor fuel grade, octane rating, and lead substitute. A motor fuel dispensing station owner or operator shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead-substitute addition displayed on a motor fuel dispenser:

1. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
2. Displays the highest price of each grade of motor fuel sold from the dispenser prior to any deliberate action of the customer resulting in a discounted price being displayed, provided the dispenser is capable of dispensing and computing the price of motor fuel at more than one price;
2. Displays a sign or label explaining the terms or conditions of any discounted price available to the consumer including whether the price differs based on method of payment or is conditional based on the sale of another product or service;
3. Complies with the requirements of R3-7-704(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), (A)(7), (A)(8), (A)(9) and (B);
3. Complies with the requirements of R3-7-704(A)(3) through (A)(6) and (B);
4. Complies with the allowable fuel descriptions indicated in the table in R3-7-704(C);
4. Displays the octane rating of each grade of gasoline; and

- ~~5-6.~~ Displays the signs legend required by Handbook 130 for motor fuel dispensers that dispense gasoline with lead substitute, ~~in letters at least 1/4" in height, and~~ The legend shall be presented in block letters on a sharply contrasting background with lettering no smaller than 1/4 inch in height.
- ~~6-B.~~ Sites that sell ethanol flex fuel previously labeled as "E-85" shall update the signage to reflect the sale of ethanol flex fuel no later than January 1, 2018. In no case shall signage with an incorrect ethanol content be advertised at the motor fuel dispensing site. Motor fuel dispensers that are used exclusively for fleet sales and other price contract sales are exempt from the requirements in subsections (A)(1) and (A)(2).
- ~~B-C.~~ All motor fuels shall meet the labeling requirements of 16 CFR 306. Additionally, the following requirements apply:
1. Gasoline containing ~~fuel~~ ethanol.
    - a. Gasoline containing greater than ~~1.5 percent~~ 1.5% by weight oxygen or ~~4.3 percent~~ 4.3% by volume ~~fuel~~ ethanol shall be labeled with the following statement to indicate the maximum percent by volume of ~~fuel~~ ethanol contained in the gasoline: "May contain up to \_\_\_\_\_ % ~~fuel~~ ethanol."
    - ~~b. Within the CBG covered area and area B, gasoline containing fuel ethanol shall be labeled with the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles."~~
    - ~~e-b.~~ Gasoline for sale outside of the CBG covered area with an ethanol content greater than 10 volume percent and less than or equal to 15 volume percent shall additionally be labeled in accordance with ~~40 CFR 80.1501, as it existed on July 18, 2014,~~ 40 CFR 1090.1510, as it existed on December 4, 2020, and is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.
  2. Gasoline containing an oxygenate other than ~~fuel~~ ethanol. Gasoline containing greater than ~~1.5 percent~~ 1.5% by weight of an oxygenate other than ethanol shall be labeled with the following statement to indicate the type and maximum percent by volume of oxygenate contained in the gasoline: "May contain up to \_\_\_\_\_ % \_\_\_\_\_."
  3. The ~~labels label~~ in subsection ~~B(1) and (B)(2)~~ (C)(1)(a) shall be printed in ~~black and white~~ block letters on a sharply contrasting background with lettering no smaller than 1/4 inch in height. ~~The statements in subsection (B)(1)(i) and (B)(1)(ii) may be printed on the same label or on separate labels if the statements are displayed next to each other.~~
  - ~~4. Non-oxygenated gasoline. It is prohibited to label a dispenser as containing no oxygenate if the gasoline contains more than 0.5 percent by volume of any oxygenates.~~
  - ~~5. Biodiesel blends. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified.~~
- ~~C-D.~~ Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post ~~on or next to each motor fuel dispenser~~ a sign or label at the motor fuel dispensing site, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.
- ~~D-E.~~ All Motor fuel dispensers shall have display a decal that contains the Division's name and ~~phone~~ telephone number. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. § 3-3414(A)(13) satisfies this requirement.
- ~~E-F.~~ All labels and information required under this section to be posted on a motor fuel dispenser shall be ~~in~~ displayed on the upper ~~50 percent~~ 50% of the front panel of each motor fuel dispenser and shall be clean, legible, and visible at all times.

**R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB**

- A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:
1. The grade of the motor fuel;
  2. The volume of each grade of motor fuel being transferred;
  3. The date of the transfer;
  4. ~~Product~~ The product transfer document number;
  5. For conventional gasoline, the minimum octane rating of each grade as prescribed by 16 CFR 306;
    - a. The minimum automotive fuel rating of each grade as prescribed by 16 CFR 306;
    - b. A legible and conspicuous statement that the gasoline being transferred contains an oxygenate and lists the type and percentage concentration of the oxygenate by volume; and
    - c. If transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
  - ~~6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;~~
  - ~~7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";~~
  - ~~8-6.~~ If a lead substitute is present in the gasoline, the type of lead substitute present;
  - ~~9-7.~~ For the The following information regarding biofuel or biofuel blends;
    - a. Ethanol ~~Flex Fuel~~ flex fuel shall contain a declaration of the volume percent of ethanol in the blend; or

- b. Biodiesel and biomass-based diesel blends containing more than ~~5 percent~~ 5% biodiesel or biomass-based diesel shall contain a declaration of the volume percent biodiesel or biomass-based diesel in the blend, as well as the grade of diesel in the blend; and
  - c. All other biofuel or biofuel blends shall contain the percentage of biofuel in the finished product; and
- ~~10.8.~~ The final destination, as follows:
- a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address and the transporter name and address;
  - b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
  - c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.
- B.** To enable a transferor to comply fully with the requirement in subsection ~~(A)(10)(b)~~ (A)(8)(b) and ~~(A)(10)(e)~~ (A)(8)(c), the transferee shall ~~supply~~ provide to the transferor information regarding the final destination.
- C.** A registered supplier, oxygenate blender, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.
- D.** A ~~person~~ transferor identified in subsection (A) shall retain product transfer documentation for each delivered shipment ~~delivered~~ for 12 months. ~~This documentation shall be available within two working days from the time of the Division's request. For 30 days following the transfer, such documentation shall be kept at the transferor's address listed on the product transfer documentation.~~
- ~~E.~~ ~~A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.~~
- ~~F.E.~~ An owner or operator of a motor fuel dispensing site or fleet owner shall ~~maintain~~ keep available for Division review, product transfer documentation for the three most recent deliveries of each grade of motor fuel ~~on the premises at of the motor fuel dispensing site~~ ~~owner or operator or fleet owner.~~ This documentation shall be available for Division review.
- ~~G.~~ ~~The Division shall accept a legible photocopy of a product transfer document instead of the original.~~
- ~~H.F.~~ A person transferring custody or title of Arizona CBG or AZRBOB shall comply with R3-7-757.
- G. Upon request by the Division, a person shall present product transfer documents to the Division within two business days. Legible photocopies or electronic copies of the product transfer documents are acceptable.

**R3-7-708. Gasoline Oxygenate Blends**

- A.** A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and meets the requirements of A.R.S. § §§ 3-3491, 3-3492, and 3-3495.
- B.** ~~Special provisions for gasoline ethanol blends:~~
- ~~1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:~~
    - ~~a. The concentration of the ethanol, excluding the required denaturing agent, shall be:~~
      - ~~i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and~~
      - ~~ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and~~
    - ~~b. The ethanol content of the gasoline ethanol blend shall:~~
      - ~~i. Be determined using the appropriate test method listed in ASTM D4814, and~~
      - ~~ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.~~
  - ~~2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:~~
    - ~~a. Outside the CBG-covered area year around, and~~
    - ~~b. Within the CBG-covered area during April.~~
  - ~~3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:~~
    - ~~a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:~~
      - ~~i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and~~
      - ~~ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;~~
    - ~~b. The finished blend complies with the standards in ASTM D4814; or~~
    - ~~c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:~~
      - ~~i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and~~
      - ~~ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived.~~
  - ~~4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.~~

**B.** Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with conventional gasoline, conventional gasoline blendstocks, ethanol flex fuel, AZRBOB, or Arizona CBG shall ensure that the fuel ethanol meets the following requirements:

1. A sulfur content not exceeding 10 ppm by weight;
2. The fuel ethanol must be composed solely of carbon, hydrogen, nitrogen, oxygen, and sulfur;
3. Only gasoline previously certified under 40 CFR Part 1090, Subpart C, (including previously certified blendstocks for oxygenate blending), gasoline blendstocks, natural gas liquids, or certified ethanol denaturant that meets the requirements in 40 CFR § 1090.275 may be used as denaturants; and
4. The concentration of all denaturants is limited to a maximum of 3.0 volume percent.

**C.** In addition to complying with the requirements in R3-7-707, the transferor of an oxygenated gasoline blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains an oxygenate and lists the type and percentage concentration of the oxygenate.

**C.** For oxygenates other than ethanol, the oxygenate shall meet the applicable ASTM standard for the oxygenate, and the finished blend shall meet ASTM D4814.

**D.** Nothing in this subsection shall preclude the sale of gasoline with an ethanol content greater than 10 percent by volume and less than or equal to 15 percent by volume of ethanol outside of the CBG-covered area.

**D.** Special provisions for gasoline-ethanol blends.

1. Gasoline-ethanol blends shall meet ASTM D4814, except as provided in subsection (D)(2) or (D)(3).
2. The maximum vapor pressure for gasoline blended with fuel ethanol may exceed the vapor pressure requirements outlined in ASTM D4814 by no more than 1.0 psi (referred to as the 1.0 psi waiver) for the following gasoline-ethanol blends:
  - a. Outside of the CBG-covered area if the concentration of ethanol, excluding the required denaturing agent, is at least 9% by volume and no more than the maximum concentration of ethanol that is allowed for the 1.0 psi waiver to apply under federal law;
  - b. In area B from October 1 through March 31 if the concentration of ethanol, excluding the required denaturing agent, is at least 6% by volume and no more than 15% by volume.
  - c. Inside the CBG-covered area during April only.
3. Gasoline blended with no more than 15% by volume of ethanol shall be blended using one of the following alternatives:
  - a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
    - i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
    - ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived; or
  - b. The finished blend complies with the standards in ASTM D4814.

**E.** Ethanol flex fuel sold or offered for sale within the CBG-covered area shall:

1. Use fuel ethanol that meets the standards in this Chapter, and
2. Have a maximum vapor pressure that does not exceed the maximum vapor pressure requirements in R3-7-751(A)(6).

**F.** E15 sold or offered for sale within the CBG-covered area shall:

1. Use fuel ethanol that meets the standards in this Chapter, and
2. Be blended with ethanol flex fuel that meets the requirements of subsection (E), or
3. Be blended with Arizona CBG or AZRBOB.

### **R3-7-710. Oxygenate Blending Requirements**

**A.** A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs in a retail storage tank at a motor fuel dispensing site or fleet vehicle fueling facility.

**B.** If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§ 3-3491, 3-3492, 3-3495, or R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:

1. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ 3-3491, 3-3492, 3-3495, or R3-7-751;
2. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend;
3. Upon written permission of the associate director, add gasoline that contains no more than ~~20 percent~~ 20% by volume of the same oxygenate to the non-compliant oxygenated gasoline blend.

### **R3-7-712. Water in Motor Fuel Dispensing Site Storage Tanks**

A motor fuel dispensing site owner or operator shall ensure that water in a motor fuel storage tank containing a product other than an alcohol gasoline or a gasoline-alcohol blend, does not exceed 1" in depth when measured from the bottom of the tank through the fill pipe. The owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

### **R3-7-713. Motor Fuel Storage Tank Labeling**

**A.** An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at the motor fuel dispensing site are labeled to identify the contents accurately as:

1. Unleaded gasoline;

2. Unleaded midgrade gasoline;
3. Unleaded premium gasoline;
4. No. 1 diesel or #1 diesel ~~fuel~~;
5. No. 2 diesel, #2 diesel ~~fuel~~, or diesel ~~fuel~~;
6. Premium diesel;
7. Gasoline vapor return, gasoline vapor recovery, or vapor recovery;
8. Biodiesel or biodiesel blend, for blends containing more than ~~5 percent~~ 5% biodiesel by volume; or
9. ~~E85 or~~ Ethanol flex fuel; ~~or~~
10. ~~Other fuel as designated on the product transfer document.~~

**B.** For gasoline-ethanol blends containing more than 10 but no more than 15 volume percent ethanol, storage tank labels shall describe the gasoline grade as specified in subsection (A)(1), (A)(2), and (A)(3), along with the designation "E15".

**C.** Any motor fuel not specified in subsection (A) shall be labeled at the storage tank fill pipe as designated on the product transfer document.

**~~B.D.~~** An owner or operator of a motor fuel dispensing site shall ensure that the label required under subsection (A) is at least  $1\frac{1}{2}'' \times 5''$   $1\frac{1}{2}$  inches by 5 inches in size with at least  $\frac{1}{4}''$  black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times; block letters on a sharply contrasting background, and with lettering no smaller than  $\frac{1}{4}$  inch in height. The label shall be clean, legible, and visible at all times.

**~~C.E.~~** An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.

**~~D.F.~~** An owner or operator of a motor fuel dispensing site shall not put motor fuel into ~~storage tanks~~ a storage tank without attaching the proper label as specified in this Section.

**~~E.G.~~** A person shall not deliver motor fuel to a motor fuel dispensing site unless the product transfer documents confirm the motor fuel is the correct type as indicated on the tank fill pipes labeled under subsection (A) or (B) or the product being delivered meets or exceeds the standards of the labeled product.

**~~F.H.~~** If tank fill pipe and vapor recovery manhole covers are color-coded, the color coding shall comply with API 1637.

### **R3-7-714. Additional Requirements for Motor Fuels ~~Repealed~~**

**~~A.~~** A person that owns or operates a motor fuel dispensing site, transmix, or production facility outside the CBG covered area shall ensure that a motor fuel offered for sale meets the requirements of the applicable specifications in R3-7-702 except that the maximum vapor pressure from May 1 through September 30 shall be 9.0 pounds per square inch or as allowed under R3-7-708(B).

**~~B.~~** The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.

**~~C.~~** Prohibited activities regarding a motor fuel sold or offered for sale:

1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel;
2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § 3-3491.
3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.

**~~D.~~** Biofuels and biofuel blends. Biofuel producers, biofuel blenders, and biofuel suppliers and owners or operators of motor fuel dispensing sites shall comply with the requirements in R3-7-718.

### **R3-7-715. Motor Fuel Standards and Testing Methods ~~and Requirements~~**

**~~A.~~** Unless otherwise stated in this A.R.S. Title 3, Chapter 19, or this Chapter, all motor fuel sold or offered for sale, and oxygenates blended with motor fuel, shall meet the applicable standards incorporated by reference in R3-7-702(3), (4), (5), (7), (8), (9), (14), (18), and (19).

**~~B.~~** October 1 through March 31 of each year, gasoline shall meet the requirements in A.R.S. § 3-3433(E).

**~~A.C.~~** Unless otherwise required in A.R.S. Title 3, Chapter 19, or this Chapter, the producer of a motor fuel shall test and certify the motor fuel for its motor fuel properties using the ~~methodologies~~ methodology-standards incorporated by reference in R3-7-702(3), (4), (5), (7), (8), (9), (14), (18), and (19).

**~~B.D.~~** The ~~octane automotive fuel~~ rating of a motor fuel shall be determined and certified in accordance with 16 CFR 306 ~~using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method.~~

### **R3-7-716. Sampling and Access to Records**

- A.** The Division shall obtain motor fuel samples for testing from:
1. The same motor fuel dispenser used for sales to customers;
  2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;
  3. A bulk storage facility;
  4. A pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;
  5. A transporter of motor fuel, including Arizona CBG or AZRBOB;
  6. A final distribution facility;

7. A third-party terminal having custody of motor fuel, including Arizona CBG or AZRBOB;
  8. An oxygenate blender or registered supplier; or
  9. A transmix or production facility.
- B. ~~At~~ Unless otherwise specified in this Chapter, an owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain for five years records relating to producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels, including Arizona CBG or AZRBOB, and upon Division request, shall make the records available within 15 days for Division inspection ~~upon request~~.

**R3-7-717. Motor Fuel Dispensing Site Equipment**

- A. Hold-open latch. If an owner or operator of a motor fuel dispensing site ~~has a dispensing device with a~~ operates a motor fuel dispenser that utilizes a nozzle equipped with a hold-open latch, the owner or operator shall ensure that the latch operates according to the manufacturer's specifications.
- B. Nozzle requirements for diesel fuel. An owner or operator of a motor fuel dispensing site ~~with a dispensing device operating a motor fuel dispenser~~ from which diesel fuel is sold at retail shall ensure that the ~~dispensing device has a~~ dispenser utilizes a diesel nozzle ~~spout~~ with a spout diameter that conforms to SAE J285; ~~“Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines.”~~.
- C. Motor fuel dispenser filters. An owner or operator of a motor fuel dispensing site shall ensure that:
1. All gasoline, gasoline-alcohol blends, and ethanol flex fuel dispensers have a 10 micron or smaller nominal pore-sized filter;
  2. Dispensers that dispense gasoline-alcohol blends shall have fuel filters designed for use with gasoline-alcohol blends;
  3. All biodiesel, biodiesel blends, diesel, and kerosene dispensers have a 30 micron or smaller nominal pore-sized filter; or
  4. In the event a motor fuel dispenser is not manufactured to be equipped to use fuel filters, they shall be installed in line with the fuel dispensing hose at the base of the dispenser. If this is not feasible, the motor fuel dispensing site owner may provide evidence that fuel filters cannot be installed at the site due to the configuration and apply for a waiver from these requirements from the ~~Associate Director~~ associate director.
- D. ~~From and after September 30, 2018, all~~ All retail diesel fuel dispensers ~~shall be equipped with nozzles that have a green grip guard~~ and ethanol flex fuel dispensers shall be equipped with nozzles that ~~have a yellow~~ meet the grip guard color requirements in § 3-3436(B). No other nozzles shall be ~~equipment~~ equipped with these color grip guards.
- E. Motor fuel dispensers shall meet appropriate ~~UL~~ Underwriters Laboratories ratings and be compatible with the motor fuel being dispensed.

**R3-7-718. Additional Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends**

- ~~A. Registration and reporting requirements for biofuel blenders, biofuel producers, and biofuel suppliers of biofuel or biofuel blends in Arizona:~~
- ~~1. Registration requirement:~~
    - ~~a. A biofuel producer, biofuel supplier, or biofuel blender shall register with the associate director, using a form prescribed by the associate director, before producing or supplying biofuel or biofuel blend in Arizona.~~
    - ~~b. A person required to register under subsection (A)(1)(a) shall notify the associate director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).~~
    - ~~c. If a biofuel producer, biofuel supplier, or biofuel blender fails to register under subsection (A)(1)(a), the associate director shall take action as allowed under A.R.S. § 3-3475 and R3-7-762.~~
    - ~~d. The Division shall maintain and make available to the public a list of all persons registered under this Section.~~
  - ~~2. Reporting requirement:~~
    - ~~a. A person required to register under subsection (A)(1)(a) shall report to the Division by January 30th of each year for the previous calendar year. The person shall:~~
      - ~~i. Report on a form or in a format prescribed by the associate director;~~
      - ~~ii. Provide the total amount of biofuel or biofuel blend produced or supplied for the previous calendar year, including the total amount of each blend component;~~
      - ~~iii. Attest to the truthfulness and accuracy of the information submitted; and~~
      - ~~iv. Ensure that the report form is signed or submitted electronically by a corporate officer, or the officer's designee, responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.~~
    - ~~b. The Division shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.~~
- A. Biofuel blenders, biofuel producers, and biofuel suppliers of biofuels or biofuel blends in Arizona shall meet the following requirements:
1. Register with the Environmental Protection Agency under 40 CFR 80.1450 or 40 CFR 1090, subpart I, as they existed on December 4, 2020.
  2. Upon request by the associate director, report the total volume of biofuel or biofuel blends produced or supplied for the previous calendar year, including the total volume of each blend component. The report shall be provided to the Division within 15 days of the request. Any information reported to the Division shall remain confidential under A.R.S. § 44-1374.

- B. Quality Assurance and Quality Control (QA/QC) (“QA/QC”) program requirements.**
1. A biofuel producer or biofuel blender shall implement a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona;
  2. The QA/QC program implemented by a biofuel producer shall include the following minimum requirements:
    - a. A sampling and testing program to certify that the biofuel meets applicable ASTM requirements that apply to the biofuel produced. All samples shall be collected in accordance with ASTM sampling methods following the addition of any applicable blend components ~~in accordance with ASTM methods~~. The plan shall include a policy for sample retention;
    - b. A Certificate of Analysis with a unique identification number generated for each batch produced and indicated on the product transfer document;
    - c. The Certificate of Analysis required under subsection (B)(2)(b) and any other supporting sampling and testing documentation required under this Section is made available to the Division within 24 hours of a request; and
    - d. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards.
  3. The QA/QC program implemented by a biofuel blender shall include the following minimum requirements:
    - a. Retention of:
      - i. Documentation that demonstrates the applicable biofuel blend components were received from a facility registered with the EPA under ~~40 CFR 80, subpart K or M~~ 40 CFR 80.1450 or 40 CFR 1090, subpart I;
      - ii. Certificates of Analysis for the biofuel used as a blend component in the blending process; and
      - iii. Documentation such as a product transfer document that demonstrates the diesel fuel used in the blending process meets the requirements of ASTM D975;
    - b. For biodiesel blending, all diesel fuel used as a blend component is analyzed to verify the biodiesel content before blending if the initial volume percent of biodiesel content in the diesel fuel component is unknown; alternatively, for biodiesel blends blended at a motor fuel dispensing site, the biofuel blender may assume the diesel contains 5% biodiesel and prepare and maintain calculations demonstrating the biodiesel content of the final biodiesel blend if it is advertised to consumers as a ~~B6 to B20~~ biodiesel blend containing more than 5 and no more than 20 volume percent biodiesel and the calculations demonstrate the biodiesel blend will be compliant with the biodiesel content advertised;
    - c. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and
    - d. All biodiesel used as a blend component in biodiesel blends consists of at least ~~99 percent~~ 99% biodiesel unless approved by the Division.
  4. All records required under this subsection are maintained either onsite or at an offsite location for at least five years and made available to the Division upon request.
  5. In the event the Division identifies biofuel or biofuel blends that do not meet ASTM ~~requirements~~ standards, the producer or biofuel blender shall evaluate the QA/QC program and make any additional changes that may be required to bring the fuel into compliance.

~~**C. Ethanol flex fuel sold or offered for sale within the CBG covered area shall:**~~

- ~~1. Use fuel ethanol that meets the standards in this Chapter, and~~
- ~~2. Have a maximum vapor pressure that does not exceed the maximum vapor pressure requirements in R3-7-751(A)(6).~~

~~**D. Requirements for motor fuel dispensing sites. The owner or operator of a motor fuel dispensing site at which ethanol flex fuel is dispensed shall ensure that any ethanol flex fuel, biodiesel or biodiesel blend sold, offered or exposed for sale, or dispensed was received from and traceable to a person registered with the Division under subsection (A)(1) and the Environmental Protection Agency under 40 CFR 80, subparts K or M.**~~

~~**E.C. Exemptions**~~

- ~~1. A biofuel producer, biofuel supplier, or biofuel blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or biofuel blender located within Arizona is not required to register under subsection (A)(1)(a);~~
- ~~2.1. A producer, supplier, or blender of diesel fuel containing five percent 5% by volume or less biodiesel is exempt from this Section if the following conditions are met:~~
  - a. The diesel fuel meets the standards of ASTM D975; and
  - b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975.
- ~~3.2. A biofuel producer, biofuel supplier, or biofuel blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section.~~
- ~~4.3. Gasoline containing up to 10 percent 15% ethanol is exempt from this section.~~

**R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB**

The following definitions apply only to R3-7-750 through R3-7-762, ~~including Tables A, 1, and 2:~~

1. “Designated alternative limit” means a ~~motor~~ fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2

Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures, which are incorporated by reference in R3-7-702(10).

~~“Downstream oxygenate blending” means combining AZRBOB and an oxygenate to produce fungible Arizona CBG.~~

2. “Importer” means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

3. “Oxygenate-blending facility” means any location (including, but not limited to, a truck) where an oxygenate or ethanol flex fuel is added to Arizona CBG or AZRBOB ~~and the resulting quality or quantity of, and nothing further is added to the resulting Arizona CBG is not altered in any other manner~~ except for the addition of a deposit-control or similar additive registered under 40 CFR 79. An oxygenate-blending facility includes a facility that recertifies Arizona CBG under R3-7-755(F).

~~“Oxygenated Arizona CBG” means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the associate director under A.R.S. § 3-3493, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG covered area from November 1 through March 31 of each year.~~

4. “Performance standard” means the VOC and NOx emission reduction percentages in R3-7-751(A)(8) and ~~Table 1 R3-7-751(D)(1).~~

~~“PM” or “Predictive Model Procedures” means the California Predictive Model and CARB’s “California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model,” as adopted April 20, 1995, which is incorporated by reference in R3-7-702.~~

5. “PM alternative gasoline formulation” means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

6. “PM alternative specifications” means the specifications for the following fuel properties, as determined using a testing methodology in R3-7-759:

- a. Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;
- b. Maximum sulfur content, expressed in the nearest part per million by weight;
- c. Maximum olefin content, expressed in the nearest 10th of a percent by volume;
- d. Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;
- e. Maximum T50, expressed in the nearest degree Fahrenheit;
- f. Maximum T90, expressed in the nearest degree Fahrenheit; and
- g. Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

~~“PM averaging compliance option” means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R3-7-751(G), (H), and (I).~~

~~“PM averaging limit” means a PM alternative specification that is subject to the PM averaging compliance option.~~

7. “PM flat limit” means a PM alternative specification that is subject to the PM flat limit compliance option.

8. “PM flat limit compliance option” means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

9. “Produce” means:

- a. Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.
- b. If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.
- c. If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner’s refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.
- d. If an oxygenate blender blends oxygenates or ethanol flex fuel into Arizona CBG or AZRBOB supplied from a gasoline production or import facility, and ~~does not alter the quality or quantity of the~~ nothing further is added to the AZRBOB ~~or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner~~ except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer ~~of the full volume~~ of the resulting Arizona CBG.

10. “Registered supplier” means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the associate director under R3-7-750.

11. “Third-party terminal” means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter or other terminal.

12. “Type 1 Arizona CBG” means a gasoline that meets the standards contained in R3-7-751(A) and ~~Table 1 R3-7-751(D)(1).~~

13. “Type 2 Arizona CBG” means a gasoline that meets the standards contained in ~~Table 2 or is certified using the PM according to the requirements of R3-7-751(G), (H), and (I)~~ R3-7-751(D)(2), and meets the requirements in:

- a. R3-7-751(A) beginning April 1 through October 31 of each year, and
  - b. R3-7-751(B) beginning November 1 through March 31 of each year.
14. "Winter" means November 1 through March 31.

**R3-7-750. Registration Relating to Arizona CBG or AZRBOB**

- A. ~~Each of~~ For each physical location, the following shall register with the associate director before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:
1. A refiner or CBG blender that produces Arizona CBG or AZRBOB;
  2. An importer that imports Arizona CBG or AZRBOB;
  3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; ~~or~~
  4. An oxygenate blender that recertifies Arizona CBG under R3-7-755(F); or
  - ~~4-5.~~ A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.
- B. A person listed in subsection (A) shall register on a form prescribed by the associate director and include the following information:
1. Business name, business address, and contact name or position title and telephone number;
  2. ~~For each refinery or oxygenate blending facility, the~~ The facility name, physical location, contact name or position title and telephone number, and type of facility;
  3. ~~For each refinery, oxygenate blending facility, or importer, a:~~ The location of the records required under this Article. If article; and if records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and
  - ~~b-4.~~ If an independent laboratory is used to meet the requirements of R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
  - ~~4-5.~~ If required under ~~40 CFR 80.76(d)~~ 40 CFR § 1090.800, the EPA registration number; and
  - ~~5-6.~~ A statement of consent permitting the Division or its authorized agent to collect samples and access records as provided in R3-7-716.
- C. A person registered under subsection (B) shall notify the associate director within 10 days after the effective date of a change in any of the information provided under subsection (B).
- D. If a refiner, ~~importer~~ CBG blender, ~~or~~ oxygenate blender, or importer fails to register under this Section, all Arizona CBG or AZRBOB, which is produced by the refiner, CBG blender, or oxygenate blender, or imported by the importer, and which is transported to the CBG-covered area, is presumed to be noncompliant from the date that registration should have occurred.
- E. The Division shall maintain a list of all registered suppliers.

**R3-7-751. Arizona CBG Requirements**

- A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this ~~subsection~~ Section are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.
1. Sulfur: 95 ppm by weight (max).
  2. Aromatics: ~~50 percent~~ 50% by volume (max).
  3. Olefins: ~~25 percent~~ 25% by volume (max).
  4. E200: ~~70-30 percent~~ 70-30% volume.
  5. E300: ~~100-70 percent~~ 100-70% volume.
  6. Maximum vapor pressure:
    - a. October: 9.0 psi.
    - b. November 1 - March 31: 9.0 psi.
    - c. April: 10.0 psi.
    - d. May: 9.0 psi.
    - e. June 1 - September 30: 7.0 psi.
    - f. A ~~gasoline-ethanol~~ gasoline-ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in ~~R3-7-708(B)~~ R3-7-708(D)(2), during April only.
  7. Oxygen and oxygenates:
    - a. Minimum content:
      - i. November 1 - March 31: ~~40 percent fuel~~ 10% ethanol by volume or ~~12.5 percent~~ 12.5% isobutanol by volume. If a petition under A.R.S. § 3-3493(C) ~~petition~~ is in effect: ~~2.7 percent~~ 2.7% oxygen by weight as approved by the associate director.
      - ii. April 1 - October 31: ~~0 percent~~ 0% by weight (any oxygenate).
    - b. The maximum oxygen content shall not exceed ~~4.0 percent~~ 5.8% by weight for ~~fuel~~ ethanol and shall not exceed the amount allowed by EPA waivers under Section 211(f) of the Clean Air Act for other oxygenates. Additionally, the oxygen content shall comply with the requirements of A.R.S. § 3-3491 and § 3-3492.
    - c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § 3-3491.

8. ~~Type 1~~ Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: ~~27.5 percent~~ 27.5% (Federal Complex Model settings: Summer, Area Class B, Phase 2). ~~Type 2 Arizona CBG shall meet CARB Phase 2 requirements.~~
- B. ~~Wintertime~~ Winter requirements.** In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.
1. Sulfur: 80 ppm by weight (max),
  2. Aromatics: 30% by volume (max),
  3. Olefins: 10% by volume (max),
  4. 90% Distillation Temp. (T90): 330° F (max),
  5. 50% Distillation Temp. (T50): 220° F (max),
  6. Vapor Pressure: 9.0 psi (max), and
  7. Oxygenates:
    - a. Minimum oxygenate content - ~~10 percent fuel~~ 10% ethanol by volume or ~~12.5 percent~~ 12.5% isobutanol by volume;
    - b. Maximum oxygen content - ~~4.0 percent~~ 5.8% oxygen by weight, and shall comply with the requirements of A.R.S. § 3-3492; and
    - c. Alternative minimum ~~fuel~~ ethanol or isobutanol content may be used if approved by the associate director under A.R.S. § 3-3493(C).
- ~~C.~~ Fuel ethanol and other oxygenate specifications.** A person that uses fuel ethanol or other oxygenates as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol or other oxygenates meet the following requirements:
- ~~1. A sulfur content not exceeding 10 ppm by weight;~~
  - ~~2. The fuel ethanol or other oxygenate must be composed solely of carbon, hydrogen, nitrogen, oxygen, and sulfur;~~
  - ~~3. For fuel ethanol, only gasoline previously certified under 40 CFR Part 80 (including previously certified blendstocks for oxygenate blending), gasoline blendstocks, or natural gas liquids may be used as denaturants; and~~
  - ~~4. For fuel ethanol, the concentration of all denaturants is limited to a maximum of 3.0 volume percent.~~
- C.** Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under R3-7-752, using the test methods specified in R3-7-759. Type 1 Arizona CBG or Type 2 Arizona CBG shall be certified with the addition of 10 volume percent ethanol or an oxygen content of 2.7% by weight for other oxygenates. A PM alternative gasoline formulation shall be certified with an oxygen content of 1.8 to 2.2% by weight as outlined in subsection (I).
- ~~D.~~ General elections.** Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director on a form or in a format prescribed by the associate director. The election shall state:
- ~~1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and~~
  - ~~2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with R3-7-760. A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.~~
- D.** In addition to the standards in subsections (A) and (B), Type 1 Arizona CBG and Type 2 Arizona CBG shall be certified meeting the following standards:
1. Type 1 standards. For each fuel property, Type 1 Arizona CBG shall comply with the following per gallon standards, and shall be certified using the Federal Complex Model:
    - a. VOC Emission Reduction: 27.5% (min) May 1 through September 15.
    - b. NOx Emission Reduction: 5.5% (min) May 1 through September 15.
    - c. NOx Emission Reduction: 0.0% (min) September 16 through October 31 and February 1 through April 30.
  2. Type 2 standards. For each fuel property, Type 2 Arizona CBG shall comply with the following maximum per gallon standards or a PM alternative gasoline formulation:
    - a. Maximum per gallon standards.
      - i. Sulfur: 40 ppm by weight (max).
      - ii. Aromatics: 25.0% by volume (max).
      - iii. Olefins: 6.0% by volume (max).
      - iv. 90% distillation temperature (T90): 300 °F (max).
      - v. 50% distillation temperature (T50): 210 °F (max).
    - b. PM alternative gasoline formulation. The PM alternative gasoline formulation shall meet the requirements of subsections (G) through (I), and the per gallon standards in R3-7-751(A) beginning April 1 through October 31 of each year, and R3-7-751(B) beginning November 1 through March 31 of each year.

- ~~E. Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director on a form or in a format prescribed by the associate director. The election shall state:~~
- ~~1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements; and~~
  - ~~2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.~~
- ~~E. A registered supplier may produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1. A registered supplier may produce and distribute Type 2 Arizona CBG year-round.~~
- ~~F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.~~
- ~~F. November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements.~~
- ~~G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2 or a PM alternative gasoline formulation. The PM alternative gasoline formulation shall meet the requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may shall certify Arizona CBG or AZRBOB using an equivalent the test method methods that the Division approves using the criteria stated specified in R3-7-759.~~
- ~~G. Certification and use of the Predictive Model Procedures for PM alternative gasoline formulations.~~
- ~~1. Except as provided in subsection (I), a registered supplier shall use the PM as provided in the Predictive Model Procedures.~~
  - ~~2. A registered supplier shall certify a PM alternative gasoline formulation with the associate director on a form prescribed by, or in a format acceptable to, the associate director, of:~~
    - ~~a. The PM alternative specifications that apply to the final blend; and~~
    - ~~b. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.~~
  - ~~3. A registered supplier shall deliver the certification required under subsection (G)(2) to the associate director within 3 business days of transporting the PM alternative gasoline formulation. The registered supplier shall have a written process that is followed to verify the PM alternative gasoline formulation meets the applicable PM alternative specifications prior to transport.~~
  - ~~4. If a registered supplier notifies the associate director under subsection (G)(3) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:~~
    - ~~a. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or~~
    - ~~b. Chooses to certify a final blend at that facility subject to a flat limit compliance option.~~
- ~~H. Certification and use of Predictive Model for alternative PM gasoline formulations.~~
- ~~1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.~~
  - ~~2. A registered supplier shall certify a PM alternative gasoline formulation with the associate director by either:~~
    - ~~a. Submitting to the associate director a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J), or~~
    - ~~b. Notifying the associate director, on a form prescribed by or in a format acceptable to the associate director, of:~~
      - ~~i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and~~
      - ~~ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.~~
  - ~~3. A registered supplier shall deliver the certification required under subsection (H)(2) to the associate director before transporting the PM alternative gasoline formulation.~~
  - ~~4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations:~~
    - ~~a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.~~

- b. ~~If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
 
  - i. ~~The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;~~
  - ii. ~~There are no changes to the PM alternative specifications for remaining fuel properties; and~~
  - iii. ~~The new PM alternative formulation meets the criteria in the Predictive Model Procedures.~~~~
- c. ~~If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).~~
- d. ~~If a registered supplier notifies the associate director under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:
 
  - i. ~~Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or~~
  - ii. ~~Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.~~~~

**H.** Prohibited activities regarding PM alternative gasoline formulations. A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under R3-7-752 if any of the following occur:

- 1. The PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures, or
- 2. The gasoline fails to conform to any PM flat limit in the PM alternative specifications. A registered supplier may not use an average compliance option in the PM alternative specifications.

**I.** ~~Prohibited activities regarding PM alternative gasoline formulations. A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under R3-7-752 if any of the following occur: Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 1.8% by weight and a maximum oxygen content of 2.2% by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.~~

- 1. ~~The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures;~~
- 2. ~~The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation;~~
- 3. ~~The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or~~
- 4. ~~With respect to any fuel property for which the registered supplier elects a PM averaging limit:
 
  - a. ~~The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2); or~~
  - b. ~~A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).~~~~

**J.** ~~Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes. Rounding of values shall be conducted following 40 CFR 1090.50.~~

**K.** ~~Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:~~

- 1. ~~A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;~~

2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 through September 15 during that same period; and
  3. A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 through September 15 during that same period.
- L.** ~~Consequence of failure to comply with averages.~~
1. ~~In addition to a penalty under R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:~~
    - a. ~~For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;~~
    - b. ~~For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the associate director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.~~
  2. ~~A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:~~
    - a. ~~The registered supplier submits a compliance plan to the associate director that includes:~~
      - i. ~~An implementation schedule for actions to correct noncompliance, and~~
      - ii. ~~Reporting requirements that document implementation of the compliance plan;~~
    - b. ~~The associate director approves the plan;~~
    - c. ~~The registered supplier implements the plan, and~~
    - d. ~~The registered supplier achieves compliance.~~
  3. ~~If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.~~
    - a. ~~If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.~~
    - b. ~~If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the associate director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director in writing of the beginning date of the probationary period.~~
  4. ~~If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.~~
- M.** ~~Effect of VOC survey failure. Each time a VOC survey conducted under R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.~~
- N.** ~~Effect of NOx survey failure. Each time a NOx survey conducted under R3-7-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.~~
- O.** ~~Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:~~
1. ~~>27 percent for the VOC emissions reduction percentage, May 1 through September 15, Table 1, column C; and~~
  2. ~~>6.8 percent for the NOx emissions reduction percentage, May 1 through September 15, Table 1, column B.~~
- P.** ~~Subsequent survey failures. If a VOC or NOxx emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NOxx survey shows excess VOC or NOxx emissions in the CBG-covered area:~~
1. ~~For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A;~~
  2. ~~For a NOxx survey failure, the NOxx average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and~~

- ~~3. If the VOC or NO<sub>x</sub> emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NO<sub>x</sub> emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NO<sub>x</sub> emissions.~~
- ~~Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.~~
- ~~R. The use of oxygenates other than ethanol under subsection (A)(7)(a)(i) and (B)(7)(a) is prohibited until EPA approves a revision to the state implementation plan allowing the use of oxygenates other than ethanol.~~

**R3-7-752. General Requirements for Registered Suppliers**

- A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.
- B. A registered supplier shall make the certification on a form or in a format prescribed by the associate director. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under R3-7-759, and performance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the associate director on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.
- C. Recordkeeping and records retention.
1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:
    - a. Sample date;
    - b. Identity of blend or product sampled;
    - c. Container or other vessel sampled;
    - d. The final blend or shipment volume; and
    - e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under R3-7-759.
  2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the associate director shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in R3-7-751 or the comparable PM ~~averaging~~ limits, unless the registered supplier demonstrates to the associate director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
  3. A registered supplier shall provide to the associate director any records maintained by the registered supplier under this Section within ~~20~~ 15 days of a written request from the associate director. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the associate director shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of R3-7-751, unless the registered supplier demonstrates to the associate director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
- D. Notification requirement. A registered supplier shall notify the associate director by ~~fax or~~ e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
- E. Quality Assurance and Quality Control (~~QA/QC~~) (“OA/QC”) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the associate director for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with R3-7-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the associate director for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director shall determine whether the changed QA/QC program meets the original quality objectives. The associate director shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).
- F. Independent testing.
1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:
    - a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
    - b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:
      - i. An independent laboratory shall collect a representative sample from each batch;
      - ii. The associate director or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and

- iii. The independent laboratory shall, for each sample identified by the associate director or designee, analyze the sample using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
    2. The associate director or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the associate director or designee. The registered supplier shall submit a duplicate of the sample to the associate director within 24 hours of the written request.
    3. Designation of independent laboratory.
      - a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).
      - b. A registered supplier shall identify the designated independent laboratory to the associate director under the registration requirements of R3-7-750.
      - c. A laboratory is considered independent if:
        - i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,
        - ii. The laboratory does not have any interest in any registered supplier, and
        - iii. The registered supplier does not have any interest in the designated laboratory.
      - d. Notwithstanding the restrictions in subsection (F)(3)(c), ~~the associate director shall consider~~ a laboratory owned or operated by a pipeline shall be considered independent if ~~it is owned or operated by a~~ the pipeline is owned or operated by four or more registered suppliers.
      - e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4.
    4. A registered supplier shall ensure that its designated independent laboratory:
      - a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:
        - i. The producer's or importer's assigned batch number for the batch sampled;
        - ii. The volume of the batch;
        - iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;
        - iv. The date and time the batch became Arizona CBG or AZRBOB;
        - v. The date and time the sample is collected;
        - vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and
        - vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);
      - b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the associate director for up to 180 days;
      - c. Submits to the associate director a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
        - i. The results of the independent laboratory's analyses for each fuel property, and
        - ii. The information specified in subsection (F)(4)(a) for each sample; and
      - d. Supplies to the associate director, upon request, a duplicate of the sample.
- G.** Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under ~~40 CFR 80.65(f)(iv)~~ 40 CFR § 1090.1315, is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under ~~40 CFR 80.65(f)(iv)~~ 40 CFR § 1090.1315, are submitted to the associate director by March 1 of each year.
- H.** Use of laboratory analysis for certification of Arizona CBG and AZRBOB.
1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:
    - a. Sulfur content: 25 ppm by weight,
    - b. Aromatics: 2.7% by volume,
    - c. Olefins: 2.5% by volume,
    - d. ~~Fuel ethanol~~ Ethanol: 0.4% by volume,
    - e. Isobutanol: 0.6% by volume,
    - f. Vapor pressure: 0.3 psi,
    - g. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
    - h. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,

- i. E200: 2.5% by volume,
  - j. E300: 3.5% by volume, or
  - k. API gravity: 0.3° API.
2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
- a. The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or
  - b. Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel ~~property. If property; and if~~ the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

**R3-7-753. General Requirements for Pipelines and Third-party Terminals**

- A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:
- 1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, CBG blender, oxygenate blender, pipeline, or third-party terminal registered with the Division under R3-7-750; and
  - 2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.
- B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the associate director.
- C. ~~A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each supplier for each day each at each input location. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at each input location. Testing shall consist of at least one sample for each registered supplier who completes a batch shipment at that input location on that day.~~
- D. A pipeline shall provide the associate director with a report summarizing the quality control testing results obtained under subsection (C) ~~within 10 days of the end of~~ by the 15th day of each month, for all results obtained during the previous month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.
- E. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the associate director by ~~fax or~~ e-mail within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.
- F. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the associate director by ~~fax or~~ e-mail within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release of the batch from a distribution point until the batch is certified as meeting the standards in R3-7-751(A) or (B), as applicable.
- G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the associate director for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the associate director for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director shall determine whether the changed QA/QC program meets the quality objectives originally approved by the Division. The associate director shall approve the changed QA/QC program if it meets the quality objectives.
- H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in R3-7-752 and oxygenate blenders in R3-7-755, as applicable.
- I. A pipeline is not liable under R3-7-761 if it follows all of the procedures in this Section.

**R3-7-754. Downstream Blending Exceptions for Transmix**

- A. A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of one percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.
- B. One of two methods shall be used to measure the transmix as it is blended into the product stream:
- 1. Meters, calibrated at least twice each year; or

2. ~~Tank gauge as per American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the Division. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070. This incorporation by reference contains no future editions or amendments.~~ Tank gauge as per the API Manual of Petroleum Measurement Standards.

**R3-7-755. Additional Requirements for AZRBOB and ~~Downstream~~ Oxygenate Blending**

**A. Application of Arizona CBG standards to AZRBOB.**

~~1.~~ Determining whether AZRBOB complies with Arizona CBG standards.

~~a.1.~~ If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with ~~Table 2 R3-7-751(C)~~, are determined by adding the specified type and amount of oxygenate to a representative sample of the AZRBOB and determining the fuel properties and performance standards of the resulting gasoline using the test methods in R3-7-759 or, in the case of ~~fuel~~ ethanol blends, certifying the AZRBOB using the CARBOB ~~model~~ Model, on a form or in a format prescribed by the associate director. If the registered supplier designates a range of amounts of oxygenate to be added to the AZRBOB, the minimum designated amount of oxygenate shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Division shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding oxygenate to the AZRBOB.

~~b.2.~~ In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the oxygenate added to the representative sample under subsection ~~(A)(1)(a)~~ (A)(1) is representative of the oxygenate the registered supplier reasonably expects will be subsequently added to the AZRBOB.

~~3.~~ The representative sample under subsection (A)(1) shall be prepared in accordance with ASTM D7717 or another test method approved by EPA or CARB.

~~2.4.~~ Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under R3-7-751 by adding the minimum amount of oxygenate designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Division shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of oxygenate to the AZRBOB.

**B. Restrictions on transferring AZRBOB.**

1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:

a. The transferee is a registered oxygenate blender and will add oxygenate in the type and amount (or within the range of amounts) designated in R3-7-757, or will recertify the AZRBOB under R3-7-755(F), before the AZRBOB is transferred from a final distribution facility; ~~or~~

b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the type and amount (or within the range of amounts) of oxygenate designated in R3-7-757 to the AZRBOB, or recertifies the AZRBOB under R3-7-755(F), before the AZRBOB is transferred from a final distribution facility.

2. A person shall not sell or supply Arizona CBG from a final distribution facility if the type and amount or range of amounts of oxygenate designated in R3-7-757 have not been added to the AZRBOB, unless the final distribution facility recertifies the AZRBOB under R3-7-755(F).

**C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:**

1. Oxygenate in the type and amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility unless the AZRBOB is recertified by an oxygenate blender under R3-7-755(F); ~~or~~

2. Other AZRBOB for which the same oxygenate type and amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, except that AZRBOB certified for the addition of 10% ethanol may be combined with AZRBOB certified for the addition of more than 10 but no more than 15 volume percent ethanol.

~~3.~~ A registered oxygenate blender may utilize an oxygenate type other than the one specified by the registered supplier provided all the requirements of R3-7-751, R3-7-752, R3-7-755, and R3-7-759 are demonstrated with the addition of the different oxygenate type.

**~~D.~~ Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.**

- ~~1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";~~
- ~~2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in R3-7-759..." and~~
- ~~3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(c)(2)(i))" is changed to read "(within the ranges of the applicable test methods)";~~

~~D. Survey for oxygenate blending during the winter. A registered supplier supplying AZRBOB from a production or import facility shall conduct an oxygenate blending survey program that meets the requirements of R3-7-760(A) or use an independent third-party to conduct an oxygenate blending survey program that meets the requirements in R3-7-760(B).~~

~~E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:~~

- ~~1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
  - ~~a. The third party shall not be an employee of a registered supplier;~~
  - ~~b. The third party shall not have an obligation to or interest in any registered supplier, and~~
  - ~~c. The registered supplier shall not have an obligation to or interest in the third party;~~~~
- ~~2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the associate director under subsection (G);~~
- ~~3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG covered area;~~
- ~~4. Analyzes each sample for oxygenate according to the methodologies specified in R3-7-759;~~
- ~~5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;~~
- ~~6. Participates in a correlation program with the associate director to ensure the validity of analysis results;~~
- ~~7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;~~
- ~~8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the associate director, within 30 days after submitting the report required under subsection (E)(10);~~
- ~~9. Permits a Division official to monitor sample collection, transportation, storage, and analysis at any time; and~~
- ~~10. Prepares and submits a report to the associate director within 30 days after the sampling is completed that includes the following information:
  - ~~a. Name of the person collecting the samples;~~
  - ~~b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the associate director under subsection (G) and the results are accurate;~~
  - ~~c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;~~
  - ~~d. Identification of the area from which the samples were collected;~~
  - ~~e. Address of each motor fuel dispensing site from which a sample was collected;~~
  - ~~f. Dates on which the samples were collected;~~
  - ~~g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;~~
  - ~~h. Name and address of each laboratory at which the samples were analyzed;~~
  - ~~i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;~~
  - ~~j. Number of samples collected at each motor fuel dispensing site; and~~
  - ~~k. Justification for excluding a collected sample if one was excluded.~~~~

~~E. Requirements for oxygenate blenders.~~

- ~~1. Requirement to add oxygenate to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that oxygenate will be added to the AZRBOB, the oxygenate blender shall add oxygenate to the AZRBOB in the type and amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB except as provided under R3-7-755(F).~~
- ~~2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending oxygenate with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R3-7-759.~~
- ~~3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct a quality assurance sampling and testing program to determine whether the proper type and amount of oxygenate is added to AZRBOB. The program shall be conducted as follows:
  - ~~a. All samples shall be collected subsequent to the addition of oxygenate and prior to combining the resulting gasoline with any other gasoline;~~
  - ~~b. Sampling and testing shall be done at one of the following rates:~~~~



- c. Within 15 days of the associate director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the associate director shall deem that the blend or shipment of Arizona CBG violates R3-7-751 unless the oxygenate blender demonstrates to the associate director that the Arizona CBG meets the standards and limits under R3-7-751.
7. Notification requirement. An oxygenate blender shall notify the associate director by e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
8. Quality assurance and quality control ("QA/QC") program. An oxygenate blender that conducts sampling and testing under subsection (E) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the associate director for approval before transporting Arizona CBG. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of R3-7-752(F), except that, for sampling and testing conducted under subsection (E)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (E).
9. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (E) in its own laboratory shall designate an independent laboratory, as described in R3-7-752(F), to conduct the sampling and testing required under subsection (E)(8).
10. Within 24 hours of the associate director's or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (E)(8).
- ~~F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the associate director. The associate director shall inform the third party of the date selected at least 10 business days before sampling is to begin.~~
- F. Downstream AZRBOB or Arizona CBG Recertification. If a registered supplier has specified blending instructions for oxygenate(s) under R3-7-752 and R3-7-755(A), an oxygenate blender may recertify AZRBOB for a different type or amount of oxygenate. The oxygenate blender is exempt from the requirements to register as a registered supplier and certify the finished Arizona CBG under R3-7-751(C) and (D), and R3-7-752, if the recertifying oxygenate blender:
1. Only recertifies AZRBOB to contain a greater amount of a specified oxygenate (e.g. the oxygenate blender adds 15 volume percent ethanol to a batch certified for the addition of 10 volume percent ethanol) or a different oxygenate at an equal or greater amount (e.g. the oxygenate blender adds 16 volume percent isobutanol to a batch certified for 10 volume percent ethanol);
  2. Issues product transfer documentation that includes the information for the recertified gasoline contained in R3-7-757, unless the recertified gasoline is blended and dispensed at a motor fuel dispensing site or fleet vehicle fueling facility;
  3. Meets the requirements applicable to oxygenate blenders in R3-7-755(E); and
  4. Uses oxygenates meeting the requirements of R3-7-708(B) or (C), or ethanol flex fuel that meets the requirements of R3-7-708(E) to blend with AZRBOB or Arizona CBG.
- ~~G. To obtain the associate director's approval of an independent third party quality assurance sampling and testing program plan, the person seeking the approval shall:~~
- ~~1. Submit the plan to the associate director no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and~~
  - ~~2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.~~
- G. Upon request, on a form or in a format prescribed by the associate director, an oxygenate blender shall report to the Division the volume of Arizona CBG recertified, including the types and amounts of oxygenate added. The report shall be submitted to the Division within 15 days of the request.
- ~~H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the associate director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.~~
- ~~I. Requirements for oxygenate blenders:~~
- ~~1. Requirement to add oxygenate to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that oxygenate will be added to the AZRBOB, the oxygenate blender shall add oxygenate to the AZRBOB in the type and amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.~~
  - ~~2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending oxygenate with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or~~

- bulk-purchaser-consumer-facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R3-7-759.
3. ~~Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.~~
    - a. ~~40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB;"~~
    - b. ~~40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in R3-7-759..." and~~
    - e. ~~40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."~~
  4. ~~Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.~~
    - a. ~~An oxygenate blender that produces Arizona CBG by blending oxygenate with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:~~
      - i. ~~Obtain a flow proportional composite sample after the addition of oxygenate and before combining the resulting Arizona CBG with any other Arizona CBG;~~
      - ii. ~~Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in R3-7-759; and~~
      - iii. ~~Determine the volume of the resulting Arizona CBG.~~
    - b. ~~If the test results for the Arizona CBG indicate that it does not contain the amount of oxygenate specified by the ranges of the applicable test methods, the oxygenate blender shall:~~
      - i. ~~Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;~~
      - ii. ~~Begin an investigation to determine the cause of the noncompliance;~~
      - iii. ~~Collect a representative sample every two hours during each in-line blend of AZRBOB and oxygenate, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and~~
      - iv. ~~Notify the associate director in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.~~
    - e. ~~The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the associate director determines that the corrective action has remedied the noncompliance.~~
  5. ~~Recordkeeping and records retention.~~
    - a. ~~An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:~~
      - i. ~~Sample date;~~
      - ii. ~~Identity of blend or product sampled;~~
      - iii. ~~Container or other vessel sampled;~~
      - iv. ~~Volume of final blend or shipment;~~
      - v. ~~Oxygen content as determined under R3-7-759; and~~
      - vi. ~~Results from all testing.~~
    - b. ~~The associate director shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director that the Arizona CBG meets the standards in R3-7-751.~~
    - e. ~~Within 20 days of the associate director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the associate director shall deem that the blend or shipment of Arizona CBG violates R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director that the Arizona CBG meets the standards and limits under R3-7-751.~~
  6. ~~Notification requirement. An oxygenate blender shall notify the associate director by fax or e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.~~
  7. ~~Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the associate director for approval at least three months before transporting Arizona CBG. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).~~

- ~~8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).~~
- ~~9. Within 24 hours of the associate director's or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).~~
- ~~J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.~~

**R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks**

- A. A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless ~~the person demonstrates to the associate director: the resulting gasoline blend meets the requirements in ASTM D4814 and is not used within the CBG-covered area.~~
- ~~1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;~~
- ~~2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and~~
- ~~3. The resulting fuel blend is not used within the CBG-covered area.~~
- B. Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in R3-7-751(A) or (B) if the person obtains prior written approval from the associate director based on a demonstration that adding the blendstock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the Division, on a form or in a format prescribed by the associate director.

**R3-7-757. Product Transfer Documentation; Records Retention**

- A. If a person transfers custody or title to Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:
1. Volume of Arizona CBG or AZRBOB being transferred;
  2. Location of the Arizona CBG or AZRBOB at the time of transfer;
  3. Date of the transfer;
  4. Product transfer document number;
  5. Identification of the gasoline as Arizona CBG or AZRBOB;
  6. Minimum octane rating of the Arizona CBG or AZRBOB;
  7. For ~~oxygenated~~ Arizona CBG that contains an oxygenate designated for sale for use in motor vehicles from November 1 through March 31, the type and minimum quantity of oxygenate contained in the Arizona CBG, a legible and conspicuous statement that the gasoline being transferred contains an oxygenate and lists the type and percentage concentration of the oxygenate;
  8. If the product transferred is AZRBOB for which oxygenate blending is intended:
    - a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of oxygenate";
    - b. Oxygenate type or types and amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent of oxygenate and weight percent oxygen content; and
    - c. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for oxygenate type or types and amount or range of amounts; and
  9. The final destination:
    - a. When a terminal is the transferor, the owner or the operator of shall include on the product transfer document the terminal name and address and the transporter name and address;
    - b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
    - c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.
- B. To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.
- C. A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual includes all required information for the Arizona CBG or AZRBOB.

- D. Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, motor fuel dispensing site, or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24 months before the most recent transfer. The transferee shall maintain product transfer documents for the 30 days before the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 24 months elsewhere.
- E. A motor fuel dispensing site or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG transferred during the 12 months before the most recent transfer. The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent transfers on the premises. The motor fuel dispensing site or fleet vehicle fueling facility may maintain the remaining product transfer documents for the preceding 12 months elsewhere.
- F. A registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 60 months before the most recent transfer. The transferee shall maintain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.
- ~~G. When a person transfers custody or title of an oxygenate that is intended for use in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the oxygenate complies with the standards for an oxygenate intended for use in AZRBOB or Arizona CBG.~~
- H.G.** Upon request by the associate director or designee, a person shall present product transfer documents to the Division within two ~~working~~ business days of the request. Legible photocopies or electronic copies of the product transfer documents are acceptable.

**R3-7-759. Testing Methodologies**

- A. Except as provided in subsection (C), a registered supplier ~~or importer~~ certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the EPA- or CARB-approved ASTM methods listed in Table A. ~~A, a copy of the EPA- or CARB-approved ASTM methods which~~ may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org. A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
- B. An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure the oxygenate content in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.
- C. Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.
- ~~D. A test method that the Division determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The Division has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the Division shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The Division shall approve a proposed test method only if the Division determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.~~
- D. A test method that the Division determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The Division has determined that test methods approved by either EPA methodology described in 40 CFR 1090.1360 or CARB are equivalent test methods. EPA referee methods from 40 CFR 80.47 as it existed December 31, 2020, may be used if the tested property is not listed in 40 CFR 1090.1360. If a correlation equation is required by EPA, CARB, or the ASTM test method, the correlation equation shall be used to align the test methods, and becomes part of the equivalent test method.
- E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

**Table A. Arizona Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB**

Fuel Parameter	Units	EPA approved Test Method	EPA approved Reproducibility	CARB approved Test Method	CARB approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003)A	1.65	D5580-00	1.4
Benzene	V%	D3606-99 (2007)	0.21	D5580-00	0.1409 (X) 1.133
Olefins	V%	D1319-02a (2003)	0.32 (x)0.5	D6550-00 (2005) if correlated to D1319	0.32 (X) 0.5; Foot-note 1
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method

	W%	D4815-99 (2004)B	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	0.2217 (x)0.92 wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
<p><sup>A</sup>A refinery refiner, blender, or importer may determine aromatics content using ASTM D1319-02a (2003) D1319-20a if the result is correlated to ASTM D5769-98 (2004) D5769-20.</p> <p><sup>B</sup>A refinery refiner, blender, or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005).</p> <p>Footnotes:</p> <p>1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."</p> <p>2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).</p>					

**Table A. Arizona Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB.**

Fuel Parameter	Units	Approved Test Methods
Aromatics	V%	D1319-20a, D5769-20, D5580-02 (2007)
Benzene	V%	D3606-21, D5580-02 (2007)
Olefins	V%	D1319-20a, D6550-10 (2010)Footnote 1, D8071-21
Oxygenates	W%	D4815-09 (2009), D4815-15b (2019), D5599-18
Vapor Pressure (Correlation Equation)	psi	D5191-20Footnote 2, 13 CCR Section 2297
Sulfur	wppm	D2622-21, D5453-93 (1993)
Distillation T50	°F	D86-99ae1, D86-20b
Distillation T90	°F	D86-99ae1, D86-20b
<p>Footnotes:</p> <p>1. Replace the last sentence in ASTM D6550-00 (2010) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."</p> <p>2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-20, Section 14.2, ASTM equation ((.965X)-A).</p>		

### R3-7-760. Compliance Surveys

- ~~A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the associate director. The associate director shall approve a compliance survey program plan if it:~~
- ~~1. Consists of at least four VOC and NO<sub>x</sub> surveys conducted at least one per month between May 1 through September 15 of each year, and~~
  - ~~2. Complies with subsection (J).~~
- A. A registered supplier shall conduct surveys for oxygenate blending during the winter and a compliance survey during the summer. The winter survey shall be conducted following the requirements in subsection (A), or using an independent third-party surveyor following the requirements in subsections (B) and (D). The summer survey shall be conducted following the requirements in subsection (C), or using an independent third-party surveyor following the requirements in subsections (C) and (D). Surveys for oxygenate blending during the winter: A registered supplier supplying AZRBOB from a production or import facility shall conduct an oxygenate blending survey program to be carried out at the facilities of each oxygenate blender who blends any AZRBOB produced or imported by the refiner or importer with any oxygenate, to determine whether the Arizona CBG, which has been produced through blending, complies with the applicable standards using the methodology specified in R3-7-759. The sampling and testing program shall be conducted as follows:
1. Samples shall be collected in accordance with ASTM D4057 and be analyzed for oxygenates. All samples shall be collected subsequent to the addition of oxygenate and prior to combining the resulting gasoline with any other gasoline.
  2. Sampling and testing shall be at one of the following rates, regardless of the amount of oxygenate added:
    - a. In the case of AZRBOB which is blended with oxygenate in a gasoline storage tank, a rate of not less than one sample for every 400,000 barrels of AZRBOB produced or imported by that refiner or importer that is blended by that oxygenate blender, or one sample every month, whichever is more frequent;
    - b. In the case of AZRBOB which is blended with oxygenate in gasoline delivery trucks through the use of computer-controlled in-line blending equipment, a rate of not less than one sample for every 200,000 barrels of AZRBOB produced or imported by that refiner or importer that is blended by that oxygenate blender, or one sample every three months, whichever is more frequent; or
    - c. In the case of AZRBOB which is blended with oxygenate in gasoline delivery trucks without the use of computer-controlled in-line blending equipment, a rate of not less than one sample for each 50,000 barrels of AZRBOB produced or imported by that refiner or importer which is blended, or one sample per month, whichever is more frequent.
  3. In the event that the test results for any sample indicate the gasoline does not comply with applicable standards, including reproducibility, the refiner or importer shall:
    - a. Immediately take steps to stop the sale of the gasoline that was sampled;
    - b. Take steps which are reasonably calculated to determine and correct the cause of the noncompliance;
    - c. Increase the rate of sampling and testing to double the required frequency outlined in subsection (A)(2); and
    - d. Continue the increased frequency of sampling and testing until the results of ten consecutive samples and tests indicate the gasoline complies with applicable standards, at which time the sampling and testing may be conducted at the original frequency.
  4. This survey program conducted by a registered supplier shall be conducted in addition to any survey requirements carried out under this subsection by other registered suppliers.
- ~~B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the associate director shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the associate director's order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.~~
- B. Instead of conducting the oxygenate blending survey program in subsection (A), the registered supplier may use an independent third-party surveyor to conduct a winter oxygenate blending survey that meets the following requirements:
1. Designed and conducted by an independent third-party surveyor that meets the requirements of subsection (D)(2)(a);
  2. Conducted November 1 through March 31 on all samples collected under the program design approved by the associate director under subsection (D);
  3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area, including a representative number of E15 samples;
  4. Analyzes each sample for oxygenate according to the methodologies specified in R3-7-759;
  5. Collects samples of gasoline produced at blender pumps using "Method #1" of the E15 Sampling Procedure specified in Handbook 158;
  6. Verifies compliance of E15 labeling requirements at gasoline retail outlets that offer E15 for sale; and
  7. Includes a sufficient amount of samples to ensure that the average levels of oxygen is determined at a 95% confidence level with an error of 0.1% or less for oxygen by weight.
- ~~C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:~~

- ~~1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);~~
- ~~2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);~~
- ~~3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;~~
- ~~4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and~~
- ~~5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the associate director to ensure the validity of analysis results;~~

C. Summer Compliance Surveys. A registered supplier shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the associate director. A registered supplier may use an independent third-party surveyor as outlined in subsection (D) to conduct a summer compliance survey. The associate director shall approve a compliance survey program plan if the plan:

1. Consists of at least four VOC and NOx surveys conducted at least once per month between June 1 and September 30 of each year;
2. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days;
3. Is representative of all Arizona CBG being dispensed in the CBG-covered area including a representative number of E15 samples;
4. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined at a 95% confidence level with an error of:
  - a. 0.1% or less for oxygen by weight;
  - b. 0.1 psi for vapor pressure;
  - c. 0.5% for aromatic hydrocarbons by volume;
  - d. 0.5% for olefins by volume;
  - e. 5° F for T50 and T90; and
  - f. 10 ppm for sulfur.
5. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in R3-7-759 (vapor pressure is required to be analyzed only from June 1 through September 30); and
6. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program approved by the associate director to ensure the validity of analysis results.
7. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions under the Federal Complex Model.

~~D. If the associate director determines that a sample used in a compliance survey does not comply with R3-7-751 or another requirement under this Article, the associate director shall take enforcement action against the registered supplier.~~

D. An independent third-party surveyor may conduct the winter oxygenate blending survey outlined in subsection (B) and the summer compliance survey outlined in subsection (C), if the survey program:

1. Is approved by the associate director;
2. Is designed and conducted by a third-party surveyor that is independent of the registered supplier:
  - a. To be considered independent:
    - i. The surveyor shall not be an employee of any registered supplier;
    - ii. The surveyor shall not have an obligation to, or interest in, any registered supplier; and
    - iii. The registered supplier shall not have an obligation to or interest in the surveyor.
3. Requires that the surveyor not provide advance notice, except as provided in subsection (D)(8), of the date or location of any survey sampling;
4. Provides a duplicate of any sample taken during the survey to the associate director, upon request of the associate director within 30 days following submission of the survey report required under subsection (D)(7), including:
  - a. Information regarding the name and address of the facility from where the sample was collected, and
  - b. The date of collection;
5. Requires that the surveyor permit a Division official to monitor sample collection, transportation, storage, and analysis at any time;
6. Requires the laboratory to participate in a correlation program approved by the associate director to ensure the validity of analysis results;
7. Requires the surveyor to submit a report of each survey to the associate director within 30 days after sampling is completed, including the following information:
  - a. Name of the person conducting the survey;

- b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
  - c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
  - d. Identification of the area from which survey samples were selected;
  - e. Dates on which the survey was conducted;
  - f. Address of each facility at which a sample was collected, and the date of collection;
  - g. Name and address of each laboratory at which samples were analyzed;
  - h. Description of the method used to select the facilities from which a sample was collected;
  - i. Number of samples collected from each facility;
  - j. Justification for excluding a collected sample from the survey, if one was excluded; and
  - k. For a survey conducted under subsection (A), analyzes each sample for oxygenate according to the methodologies specified in R3-7-759; or
  - l. For a survey conducted under subsection (C), results of the sample analysis for oxygenate type, oxygen weight percent, aromatic hydrocarbons, olefin content, E200, E300, vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (C)(1);
8. Begins each survey on a date selected by the associate director, or as approved in the survey program. The associate director shall notify the surveyor of the date selected at least 10 days before the survey is to begin.
- E. A registered supplier shall comply with the following VOC and NOx compliance survey requirements: To obtain the associate director's approval of a survey program plan, the person seeking approval shall:
- 1. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in R3-7-702; Submit the plan to the associate director no later than January 1 to cover the survey period of November 1 through March 31 or June 1 through September 15 of each year, as applicable; and
  - 2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent third-party surveyor.
  - 3. The CBG-covered area fails a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.
- F. A registered supplier shall determine the result of the series of NOx compliance surveys conducted May 1 through September 15 as follows: If the associate director determines that a sample used in a compliance survey does not comply with R3-7-751 or another requirement under this Article, the associate director may take enforcement action against the registered supplier, oxygenate blender, and/or retail location.
- 1. For each compliance survey sample, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NOx emissions reduction at 40 CFR 80.45, as incorporated by reference in R3-7-702; and
  - 2. The CBG-covered area fails the NOx series of compliance surveys conducted May 1 through September 15 if the NOx emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.
- G. General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The associate director shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program: If a registered supplier fails to ensure that an approved compliance survey program is conducted, the associate director may consider all batches delivered into the CBG-covered area during the survey period as non-compliant.
- 1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:
    - a. The surveyor shall not be an employee of any registered supplier;
    - b. The surveyor shall not have an obligation to or interest in any registered supplier, and
    - e. The registered supplier shall not have an obligation to or interest in the surveyor;
  - 2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen (by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;
  - 3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
  - 4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the associate director, within 30 days following submission of the survey report required under subsection (G)(6);

- ~~5. Requires that the surveyor permit a Division official to monitor sample collection, transportation, storage, and analysis at any time;~~
- ~~6. Requires the surveyor to submit a report of each survey to the associate director within 30 days after sampling for the survey is completed that includes the following information:
 
  - ~~a. Name of the person conducting the survey;~~
  - ~~b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;~~
  - ~~e. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;~~
  - ~~d. Identification of the area from which survey samples were selected;~~
  - ~~e. Dates on which the survey was conducted;~~
  - ~~f. Address of each facility at which a sample was collected, and the date of collection;~~
  - ~~g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);~~
  - ~~h. Name and address of each laboratory at which samples were analyzed;~~
  - ~~i. Description of the method used to select the facilities from which a sample was collected;~~
  - ~~j. Number of samples collected from each facility;~~
  - ~~k. Justification for excluding a collected sample from the survey, if one was excluded; and~~
  - ~~l. Average VOC and NOx emissions reduction percentage.~~~~
- ~~H. An independent surveyor shall begin each survey on a date selected by the associate director. The associate director shall notify the surveyor of the date selected at least 10 business days before the survey is to begin. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsections (A) and (C) by contracting with an independent third-party surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent third-party surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent third-party surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier shall submit to the associate director a copy of the contract with the independent third-party surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.~~
- ~~I. To obtain the associate director's approval of a compliance survey program plan, the person seeking approval shall: A registered supplier is exempt from the survey requirements of this section if they supply less than 1,000,000 gallons of Arizona CBG or AZRBOB within a calendar year.
  - ~~1. Submit the plan to the associate director no later than January 1 to cover the survey period of May 1 through September 15 of each year; and~~
  - ~~2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.~~~~
- ~~J. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier shall submit to the associate director a copy of the contract with the independent surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.~~

**R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB**

- A. Persons liable.** If motor fuel designated as Arizona CBG or AZRBOB does not comply with R3-7-751, the following are liable for the violation:
  1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
  2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
  3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.
- B. Defenses.**
  1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:
    - a. That the violation was not caused by the person or person's employee or agent;
    - b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and
    - c. That the person had a quality assurance sampling and testing program, as described in subsection (C) in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on

the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.

2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:
    - a. A violation of law other than A.R.S. Title 3, Chapter 19, Article 6, this Article, or an act of sabotage or vandalism;
    - b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or
    - c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.
  3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by **reasonably specific a preponderance of the evidence**, that the violation was caused or must have been caused by another person.
- C. Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a motor fuel dispensing site or fleet ~~owner~~ vehicle fueling facility, a person shall present evidence:
1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in R3-7-751; and
  2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in R3-7-751:
    - a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and
    - b. The person remedies the violation as soon as practicable.

**R3-7-762. Penalties**

Any person who violates any provision of this Article is subject to the following:

1. Prosecution for a Class 2 misdemeanor under A.R.S. § 3-3473(B)(4);
2. Civil penalties ~~in the amount of \$500 per violation~~ under A.R.S. §§ 3-3473 and 3-3475; and
3. Stop-use, stop-sale, hold, and removal orders under A.R.S. § 3-3415(A)(2).

**Table 1. Type 1 Arizona CBG Standards Repealed**

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	Per-Gallon (minimum)	Average	Minimum (per gallon)	Maximum (per gallon)
VOC Emission Reduction (%) May 1 through Sept. 15	27.5	29.0	25.0	N/A
NOx Emission Reduction (%) May 1 through Sept. 15	5.5	6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - October 31 and February 1 - April 30***	0.0	N/A	N/A	N/A
Oxygen content: fuel ethanol, (% by weight unless otherwise noted) November 1 - March 31*** April 1 - October 31	N/A 0.0*	N/A N/A	N/A 0.0	N/A 4.0
Oxygen content: other than fuel ethanol, (% by weight) November 1 - March 31*** April 1 - October 31	N/A 0.0	N/A N/A	N/A 0.0	N/A ***3.5

\* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements and with A.R.S. § 3-3491.  
 \*\* Dates represent compliance dates for the owner of a motor fuel dispensing site or a fleet vehicle fueling facility.  
 \*\*\* A registered supplier shall certify all Arizona CBG as Type 2 Arizona CBG meeting the standards in Table 2 beginning November 1 through March 31.  
 \*\*\*\* Unless prohibited by A.R.S. § 3-3491.

**Table 2. Type 2 Arizona CBG Standards Repealed**

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard	Averaging	Flat Standard*	Units of Standard

	(per-gallon)	Standard*	(per-gallon maximum)	
Sulfur Content	80	30	40	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290	300	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200	210	Degrees Fahrenheit
Oxygen content: fuel ethanol** November 1 - March 31	10% fuel ethanol**	=	10% fuel ethanol**	% by volume
April 1 - October 31		=	4.0	
The maximum oxygen content EtOH Year around		=		% by weight
Oxygen content: isobutanol** November 1 - March 31	12.5% isobutanol	=	12.5% isobutanol	% by volume
April 1 - October 31		=		
The maximum oxygen content year around		=	3.5	% by weight
* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and R3-7-751(G), (H), and (I) for the use of the PM.				
** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.				
A registered supplier shall certify all Arizona CBG using fuel ethanol or isobutanol as the oxygenate beginning November 1 through March 31. Alternative oxygenate contents not less than 2.7% total oxygen may be used if approved by the associate director under A.R.S. § 3-3493(C).				
NOTE: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.				

## **ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS REPEALED**

### **R3-7-901. Material Incorporated by Reference Repealed**

The following documents are incorporated by reference and on file with the Division. The documents incorporated by reference contain no later amendments or editions:

1. ~~Appendix J.5 of Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol. II: Appendices, November 1991 edition (EPA450/391022b), published by the U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.~~
2. ~~San Diego County Air Pollution Control District Test Procedure TP-96-1, March 1996, Third Revision, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.~~
3. ~~The following CARB test procedures:~~
  - a. ~~California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.~~
  - b. ~~California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.~~
  - c. ~~California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2C, Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.~~
  - d. ~~California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.~~
  - e. ~~California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2B, Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.~~

- f. ~~California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L Street, Sacramento, California 95812-2815.~~
- g. ~~California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L Street, Sacramento, California 95812-2815.~~
- h. ~~California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L Street, Sacramento, California 95812-2815.~~

**R3-7-902. Exemptions Repealed**

- A. ~~The owner or operator of a gasoline dispensing site that has decommissioned the site's stage II vapor recovery system in accordance with R3-7-913 or that is subject to A.R.S. § 3-3512, is exempt from the provisions of this Article but shall comply with the provisions of Article 10.~~
- B. ~~The owner or operator of a gasoline dispensing site that has a throughput that does not exceed the throughput specified in A.R.S. § 3-3515(B) may obtain an exemption by submitting a written request to the Division attesting that throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § 3-3515(B). By the 15th of each month, beginning the month after the Division approves the exemption, the person shall submit a written throughput report to the Division. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the Division deems the exemption void.~~
- C. ~~To obtain an independent small business marketer exemption, a person shall derive at least 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing site for which an exemption is requested. The person shall submit a written request for exemption to the Division. The Division shall determine the percentage of total annual income represented by the sale of gasoline on the basis of the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:
 
  - 1. ~~Purchase and sale of diesel fuel, and~~
  - 2. ~~State lottery sales net commissions and incentives.~~~~
- D. ~~Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.~~

**R3-7-903. Equipment and Installation Repealed**

- A. ~~A person subject to A.R.S. § 3-3515 shall install, maintain, and operate a stage I and stage II vapor recovery system and component as specified in this Article until the stage II vapor recovery system is decommissioned in accordance with R3-7-913.~~
- B. ~~The Division shall reject a vapor recovery system or component from future installation if:
 
  - 1. ~~Federal regulations prohibit its use;~~
  - 2. ~~The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-901; or~~
  - 3. ~~The vapor recovery system or component fails greater than 20% of Division inspections for that system or component or the Division receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Division provides at least 30 days public notice of its proposed rejection.~~~~
- C. ~~The piping of both a stage I and stage II vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I and stage II vapor recovery system or component from the CARB-certified configuration without obtaining Division approval under R3-7-904.~~
- D. ~~If Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.~~
- E. ~~A stage I spill containment may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid. A stage II vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.~~

**R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval Repealed**

- A. ~~A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:
 
  - 1. ~~Adding or replacing a gasoline storage tank that is equipped with a Division approved stage II vapor recovery system;~~
  - 2. ~~Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or~~
  - 3. ~~Replacing a Division-approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.~~~~
- B. ~~A person shall file with the Division a written change order to an authority to construct plan approval on a form provided by the Division if a modification of the approved vapor recovery system or component is needed after the Division issues an authority to construct plan approval. The person shall not make any modification until the Division approves the change order.~~

- ~~C. To obtain an authority to construct plan approval, a person shall submit to the Division, on a form provided by the Division, the following:
 
  1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;
  2. The name of the stage I or stage II vapor recovery system or component to be installed along with the CARB certification for that system or component;
  3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
  4. A copy of a blueprint or sealed site plan for the vapor recovery system or component including all equipment and piping detail; and
  5. The application fee specified under R3-7-906.~~
- ~~D. After review and approval of the authority to construct plan, the Division shall issue the authority to construct plan approval and mail the plan approval to the address indicated on the application.
 
  1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Division review.
  2. Construction of a stage II vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
  3. An authority to construct plan approval is not transferable.~~
- ~~E. The Division shall deny an authority to construct plan for any of the following reasons:
 
  1. Providing incomplete, false, or misleading information; or
  2. Failing to meet the requirements stated in this Chapter.~~
- ~~F. If excavation is involved, the Division may visually inspect the stage II underground piping of a gasoline dispensing site before the pipeline is buried, for compliance with the authority to construct plan approval. A person who owns or operates a vapor recovery system or component shall give the Division notice by fax or e-mail at least two business days before the underground piping is complete. The Division shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.~~
- ~~G. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval, if an initial inspection is scheduled according to R3-7-905.~~
- ~~H. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.~~

**R3-7-905. Initial Inspection and Testing Repealed**

- ~~A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval. The inspection shall be witnessed by the Division at a time approved by the Division and include any of the following relevant to the specific vapor recovery system installed:
 
  1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
  2. A pressure decay test for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in R3-7-901(1) is used, the Division shall fail the vapor recovery system if gasoline storage tanks have less than 10 percent or greater than 60 percent vapor space. If the pressure decay test in R3-7-901(2) is used, the Division shall fail the vapor recovery system if gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The Division shall compute combined tank vapor space for manifolded systems;
  3. Communication from dispenser to tanks for each product, using the San Diego TP-96-1 and CARB TP-201.4 test procedures;
  4. Air to liquid volume ratio by volume meter of a vapor recovery system, using CARB TP-201.5 or CARB endorsed equivalent procedures to determine air to liquid (A/L) ratios;
  5. Spillage of a stage II vapor recovery system, using the CARB TP-201.2C procedure;
  6. Liquid removal of a stage II vapor recovery system, using the CARB TP-201.6 procedure;
  7. Flow versus pressure for components in a stage II vapor recovery system, using the CARB TP-201.2B procedure; and
  8. Procedures specified by a manufacturer for testing the vapor recovery system.~~
- ~~B. If there is a difference between a testing contractor's and the Division's test results, the Division's test results prevail.~~
- ~~C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).~~
- ~~D. A person who cancels an initial inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Division shall take enforcement action if a person fails to comply with this Section.~~
- ~~E. A person shall notify the Division when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Division approves the reinspection date and time.~~
- ~~F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Division shall fail the initial inspection of that site.~~

- ~~G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed:~~
- ~~1. The Division shall take enforcement action if the person fails to timely reschedule the inspection.~~
  - ~~2. The registered service agency shall notify the Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.~~
  - ~~3. The Division shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the inspection date and time.~~

**R3-7-906. Fee Repealed**

~~The authority to construct plan approval fee is \$250.~~

**R3-7-907. Operation Repealed**

- ~~A. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall not transfer or permit the transfer of gasoline into any motor vehicle fuel tank unless stage II vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 2, Chapter 19, Article 7, and this Article.~~
- ~~B. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall operate the stage II vapor recovery system and associated components in compliance with the CARB certification for that system and these rules:~~
- ~~C. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall inspect the system and its components daily. Daily inspections shall include all nozzles, hoses with connecting hardware, stage I fittings, and spill containment.~~
- ~~D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage II vapor recovery system or component if one or more of the following system or component defects occur:~~
- ~~1. A faceplate or facecone of a balance system nozzle does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or facecone is 1/4 or more of its circumference. These conditions also apply to a vacuum assist system that has a nozzle with a bellows and faceplate that seal with a vehicle fill pipe;~~
  - ~~2. When more than 1/4 of the cone is missing for vapor assist systems having bellowsless nozzles with flexible vapor deflecting cones;~~
  - ~~3. A nozzle bellows has a triangular tear measuring 1/2 inch or more to a side, a hole measuring 1/2 inch or more in diameter, or a slit or tear measuring one inch or more in length;~~
  - ~~4. A nozzle bellows is loosely attached to the nozzle body, attached by means other than that approved by the manufacturer, or a vapor check valve is frozen in the open position due to impaired motion of the bellows;~~
  - ~~5. Any nozzle liquid shut-off mechanism malfunctions in any manner, the spring or latching knurl for holding the nozzle in place during vehicle fueling is damaged or missing, or a nozzle is without a functioning hold open latch;~~
  - ~~6. Any nozzle with a defective vapor check valve, or hose having a disengaged breakaway, when all other nozzles are capable of delivering the same grade of fuel from the same turbine pump;~~
  - ~~7. Any vacuum assist nozzle having less than the acceptable number of open vapor collection holes specified by CARB for the particular model of nozzle in service, the nozzle spout rocks or rotates more than 1/8 inch, the spout shows heavy wear with the tip damaged in a way that the largest axis exceeds .84 inch, or the plastic insert in the tip of the spout is loose;~~
  - ~~8. Any nozzle with a dispensing rate greater than 10 gallons per minute when only one nozzle associated with the product supply pump is operating, or a flow restrictor is improperly installed, leaking, or non-CARB approved;~~
  - ~~9. Any nozzle with a physically damaged breakaway or a breakaway showing evidence of product leakage, or a breakaway not approved for the installed system;~~
  - ~~10. A dispenser mounted vacuum pump that is not functioning;~~
  - ~~11. Any vapor recovery hose and, as applicable, the accompanying whip hose, that:
    - ~~a. Is crimped, kinked, flattened, or damaged in any manner that constricts the return flow of vapor;~~
    - ~~b. For a balance hose, has any slits or tears greater than 1/4 inch in length, perforations greater than 1/8 inch in diameter, or assist system hoses that are cut, torn, or badly worn so as to cause a possible fuel leak;~~
    - ~~c. Does not fully retract, for approved dispenser configurations using hose retractors, or a balance system hose that exceeds the 10-inch loop requirement where required, or for a hose length that allows a balance hose to touch the ground, or for a vacuum assist hose having more than 6 inches in contact with the ground;~~
    - ~~d. Does not swivel at the hose/nozzle connection; or~~
    - ~~e. Does not have a required internal liquid pick-up or the hose with liquid pick-up is improperly assembled for the pick-up to properly function;~~~~
  - ~~12. Tank vent pipes that are not the proper height, or are not properly capped with approved pressure and vacuum vent valve settings, or where required, vent pipes that do not meet the CARB-specified paint color code for the installed system;~~
  - ~~13. The stage I installation is not properly installed or maintained, in that:
    - ~~a. Spill containment buckets are cracked, rusted, the sidewalls are not attached or otherwise improperly installed, or spill containment buckets are not clean and empty of liquid, or there are non-functioning drain valves, or drain valves that do not seal;~~
    - ~~b. A fill adaptor collar or vapor poppet (drybreak) that is loose or damaged, or with a fill or vapor cap that is not installed, is missing, broken, or without gaskets;~~~~

- ~~e. Coaxial stage I that is not equipped with a functioning CARB-approved poppeted fill tube, or the coaxial cap is not installed, is missing, broken, or without gaskets; or~~
- ~~d. A fill tube is missing, not sealed, has holes, broken or damaged overflow preventors, or if the high point of the bottom opening is more than 6 inches above the tank bottom;~~
- ~~14. The tank riser cap with instrument lead wire for an electronic monitoring system is not tightly installed, or any other tank riser is not securely sealed and capped;~~
- ~~15. The under dispenser vapor recovery piping is not securely intact or is crimped, does not slope to the underground vapor pipe riser, hoses used for connection are deteriorated or not approved for use with gasoline, resettable impact type shear valves are closed, or there is any other valve or restriction to impede the vapor path;~~
- ~~16. An above-ground storage tank that does not display a permanently attached UL approval plaque;~~
- ~~17. A vacuum assist system with an inoperative central vacuum unit;~~
- ~~18. A vacuum assist system with an inoperative vapor processing (burner) unit;~~
- ~~19. A vacuum assist system with a monitoring system certified by CARB or the authority to construct that is not operational or malfunctions; or~~
- ~~20. Any other component identified in the diagrams, exhibits, attachments or other documents that are certified by CARB or required by the authority to construct for that system is missing, disconnected, or malfunctioning.~~
- ~~E. The owner or operator of a gasoline dispensing site shall inspect for the presence and proper placement of public information signs required by A.R.S. § 3-3515(E) and this Article.~~
- ~~F. For a stage II vacuum assist vapor recovery system, the owner or operator of a gasoline dispensing site shall immediately place damaged or malfunctioning equipment out of service and shall notify the Division by fax or e-mail no more than one day after the malfunction of a central vacuum or processor unit. Once the equipment or system is repaired, the owner or operator shall provide written notice within five days of the repair to the Division.~~
- ~~G. For proper operation of a stage I system, under A.R.S. § 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump out from a gasoline storage tank to a mobile transporter.~~
- ~~H. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.~~

**R3-7-908. Training and Public Education Repealed**

- ~~A. Each operator of a gasoline dispensing site using stage II vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated and maintained properly in accordance with the manufacturer's specifications and CARB certification. The operator shall maintain documentation of this training onsite and make the documentation available to the Division on request.~~
- ~~B. In addition to the information required in A.R.S. § 3-3515(E), an operator of a gasoline dispensing site with stage II vapor recovery shall display a Division telephone number that the public can call to report nozzle or other equipment problems. The operator shall place the required information on each face of each gasoline dispenser. The headings shall be at least 3/8 inches and shall be readable from up to 3 feet away for decal signs, and from up to 6 feet away for permanent (nondecal) signs. Decals shall be located on the upper 60% of each face of each dispenser.~~

**R3-7-909. Recordkeeping and Reporting Repealed**

- ~~A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done under this Article.~~
- ~~B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage II equipment.~~
- ~~C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § 3-3515(B) from requirements to install and operate stage II vapor recovery equipment, shall maintain a log at the site showing monthly throughputs. The owner or operator shall submit throughput records to the Division as required under R3-7-902(B). If any throughput requirement provided in A.R.S. § 3-3515(B) and this Article is exceeded for any month, the owner or operator shall notify the Division in writing within 30 days. The owner or operator shall within six months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article.~~
- ~~D. The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Division upon request.~~

**R3-7-910. Annual Inspection and Testing Repealed**

- ~~A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Division approves the inspection date and time.~~
- ~~B. The annual inspection shall include the tests defined in R3-7-905(A)(1) through (8) that pertain to the specific vapor recovery system installed.~~

- ~~C. If there is a difference between a testing contractor's and the Division's test results, the Division's test results prevail.~~
- ~~D. If a site fails to pass any of the tests required by subsection (B), the affected vapor recovery system or component shall remain out of service until the vapor recovery system and component pass all appropriate tests in subsection (B).~~
- ~~E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.~~
- ~~F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the Division issues to registered service agencies.~~
- ~~G. A person who cancels a witnessed inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Division shall take enforcement action if a person does not comply with this subsection.~~

**R3-7-911. Compliance Inspections Repealed**

~~The Division shall not announce when it plans to conduct a compliance inspection of a stage I or stage II vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title 3, Chapter 19, or this Article, the Division shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-910.~~

**R3-7-912. Enforcement Repealed**

~~If the Division finds that a stage II vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title 3, Chapter 19, the Division shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title 3, Chapter 19 and this Chapter before the vapor recovery system or component is placed in service.~~

**R3-7-913. Stage II Decommissioning Repealed**

- ~~A. The owner or operator of a gasoline dispensing site with a stage II vapor recovery system shall decommission the stage II vapor recovery system in accordance with the following schedule:
 
  - ~~1. If the owner or operator holds a license issued by the Division numbered BMF 13676 or less, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2016 and September 30, 2017; or~~
  - ~~2. If the owner or operator holds a license issued by the Division numbered BMF 13677 or more, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2017 and September 30, 2018.~~~~
- ~~B. Request for alternate decommissioning plan. The following owners or operators may submit an alternate decommissioning plan requesting to decommission the stage II vapor recovery systems at a time other than would be required under subsection (A)(1) or (A)(2) but no sooner than October 1, 2016 and no later than September 30, 2018. The owner or operator shall submit the alternate decommissioning plan to the Division for approval prior to decommissioning at an alternate time period:
 
  - ~~1. An owner or operator that holds licenses issued by the Division for three or fewer gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsections (C)(1) through (4); and~~
  - ~~2. An owner or operator that holds licenses issued by the Division for four or more gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsection (C).~~~~
- ~~C. An owner or operator that submits a request for approval of an alternate decommissioning plan shall include the following information as specified under subsection (B):
 
  - ~~1. The business name and mailing address on all licenses;~~
  - ~~2. The name and telephone number of an individual with whom the Division can communicate;~~
  - ~~3. The license number and address of each gasoline dispensing site and a statement of whether the owner or operator proposes to decommission each vapor recovery system between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018;~~
  - ~~4. A statement of whether all gasoline dispensers at the gasoline dispensing site will be replaced and if so, whether the owner or operator proposes to replace the gasoline dispensers between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018; and~~
  - ~~5. If the owner or operator owns four or more gasoline dispensing sites, an alternate decommissioning plan that includes:
 
    - ~~a. The license numbers and addresses of 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2016 and September 30, 2017; and~~
    - ~~b. The license numbers and addresses of the remaining 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2017 and September 30, 2018.~~~~~~
- ~~D. The Division shall approve or reject, on a first-come-first-served basis, an alternate decommissioning plan within three months after the alternate decommissioning plan is submitted. The Division shall allow decommissioning of stage II vapor recovery equipment at the time gasoline dispensers are replaced as indicated on the request for approval under subsection (C)(4). The Division may reject~~

~~an alternate decommissioning plan if the information required under subsection (B) is not provided or if the year requested for decommissioning already has more than 60 percent of all gasoline dispensing sites scheduled for decommissioning;~~

- ~~E. The owner or operator of a gasoline dispensing site that is exempt under R3-7-902 shall decommission the site any time between October 1, 2016, and September 30, 2018;~~
- ~~F. The owner or operator of a gasoline dispensing site shall ensure that a Notice of Intent, using a form or format provided by the Division, is submitted to the Division at least 10 days before the planned decommissioning and includes the following information:
  - ~~1. Name of the owner or operator of the gasoline dispensing site;~~
  - ~~2. Address of the gasoline dispensing site;~~
  - ~~3. Name of the decommissioning contractor;~~
  - ~~4. Decommissioning dates;~~
  - ~~5. Name of the vapor testing registered service representative; and~~
  - ~~6. A statement indicating whether all gasoline dispensers at the gasoline dispensing site are being replaced.~~~~
- ~~G. If any of the information provided under subsection (F) changes, the owner or operator shall ensure that the Division receives the changed information at least 24 hours before the scheduled start of decommissioning.~~
- ~~H. The owner or operator of a gasoline dispensing site shall ensure that all stage II vapor recovery systems are decommissioned according to the material incorporated by reference in R3-7-901(4) with the following exceptions:
  - ~~1. Liquid shall be purged from the vapor piping following disconnection in section 14.6.6;~~
  - ~~2. Vapor piping that is not disconnected from the tank top in accordance with section 14.6.7 shall be disconnected in the future if construction involving excavation that renders the piping accessible is performed; and~~
  - ~~3. The pressure decay test conducted under section 14.6.12 shall meet the requirements in R3-7-1005(A)(1).~~~~
- ~~I. The decommissioning contractor shall:
  - ~~1. Complete a Decommissioning Checklist using a form or format provided by the Division;~~
  - ~~2. Provide a copy of the completed Decommissioning Checklist to the owner or operator of the gasoline dispensing site at the time of decommissioning; and~~
  - ~~3. Submit a copy of the completed Decommissioning Checklist to the Division within 10 days after decommissioning of the stage II vapor recovery system is complete. Decommissioning of a stage II vapor recovery system is complete on the date and at the time when the gasoline dispensing site resumes sales of motor fuel following decommissioning.~~~~
- ~~J. A gasoline dispensing site with a stage II vapor recovery system that is decommissioned is exempt from the annual inspection and testing required under R3-7-910 but shall be subject to the initial inspection and testing prescribed under R3-7-1005 within 60 days after decommissioning is complete.~~
- ~~K. The requirements in Article 10 apply to all gasoline dispensing sites at which stage II vapor recovery systems have been decommissioned.~~
- ~~L. The Division shall place out-of-service a gasoline dispensing site at which a stage II vapor recovery system is not decommissioned according to this Section until the gasoline dispensing site is decommissioned and impose civil penalties under A.R.S. § 3-3475 on the owner or operator of the gasoline dispensing site.~~

## ARTICLE 10. STAGE I VAPOR RECOVERY

### R3-7-1001. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Division. The documents incorporated by reference contain no later amendments or editions:

- ~~1. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815 (herein referred to as "CARB TP-201.1B").~~
- ~~2. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.~~
- ~~3. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.~~
- ~~4. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815 (herein referred to as "CARB TP-201.1E").~~
- ~~5. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815 (herein referred to as "CARB TP-201.3").~~
- ~~6. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air~~

Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815 (herein referred to as "CARB TP-201.3C").

### **R3-7-1002. Exemptions**

- ~~A.~~ The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.
- ~~B.~~ An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. § 3-3512(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline dispensing site shall submit an annual throughput report to the Division, using a form prescribed by the Division, no later than March 30 of each year and attest to the throughput during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. § 3-3512(B) was exceeded, the Division shall deem the exemption void.

### **R3-7-1003. Equipment and Installation**

- A. The Division shall reject a stage I vapor recovery system or component from future installation if:
1. Federal regulations prohibit its use;
  2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-1001; or
  3. The vapor recovery system or component fails greater than 20% of Division inspections for that system or component or the Division receives equivalent failure results from a vapor recovery registered service agency, as defined and regulated by Article 6, or from another jurisdiction's vapor recovery program, and the Division provides at least 30 days public notice of its proposed rejection.
- B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining Division approval under R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the Division as required under A.R.S. § 3-3512.
- C. If Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.
- D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.
- E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

### **R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval**

- A. A person shall not begin to construct a ~~site requiring a~~ stage I vapor recovery system or to make a ~~major~~ modification of an existing stage I vapor recovery system before applying for and obtaining approval of an authority to construct an Authority to Construct plan application permit. A major modification is: A modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a ~~Division approved~~ stage I vapor recovery system;
  2. Modifying, adding, or replacing ~~underground~~ vent piping; or
  3. Conducting construction ~~under R3-7-913(H)(2):~~ at the tank top that exposes stage I or stage II vapor recovery piping.
- B. A person shall file with the Division a written change order, using a form provided by the Division, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the Division issues an ~~authority to construct Authority to Construct plan approval permit~~. The person shall not make any modification until the Division approves the change order.
- C. To obtain an ~~authority to construct Authority to Construct plan approval permit~~, a person shall submit to the Division, on a form provided by the Division, the following:
1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
  2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;
  3. The street address of the site where construction or ~~major~~ modification will take place with an estimated timetable for construction or modification;
  4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
  5. The application fee specified under R3-7-1006.
- D. A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:
1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
  2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;
  3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
  4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;

- ~~5.~~ Has vapor piping with a minimum 1/8 inch slope per foot from the vent riser to the tank;
- ~~5-6.~~ Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
- ~~6-7.~~ Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
- ~~7-8.~~ Has tank vent pipes with a minimum inside diameter of:
- Two inches if the pipe is not manifolded, or
  - Three inches from the point of manifold ~~if the pipe is manifolded for a single vent line;~~
- ~~8-9.~~ Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
- ~~9-10.~~ If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);
- ~~10-11.~~ Has risers into gasoline storage tanks that are ~~capped~~ covered with UL-approved caps approved by Underwriters Laboratories;
- ~~11-12.~~ Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;
- ~~12-13.~~ Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a ~~reflective effectiveness~~ Light Reflectance Value ("LRV") of at least 55-percent 55%, according to the following principles: Reflectivity shall be determined by visually comparing the paint with paint color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e., 58YY 88/180 where the number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and
- Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses either the Master Palette system to specify the paint color (e.g. 58YY 88/180, where "88" represents the paint reflectivity percentage), or notes the LRV for a specific color;
  - Examples of colors have a LRV of at least 55% include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish;
  - A manhole cover that is color coded for product identification is exempt from this subsection; and
- ~~13-14.~~ Complies with other requirements outlined in the ~~authority to construct~~ Authority to Construct permit.
- E. After review and approval of the ~~authority to construct~~ Authority to Construct ~~plan application~~, the Division shall issue the ~~authority to construct~~ Authority to Construct ~~plan approval permit~~ and mail, ~~fax~~, or e-mail the ~~plan approval permit~~ to the address indicated on the application.
- A copy of the ~~authority to construct~~ Authority to Construct ~~plan approval permit~~ shall be maintained at the facility during construction so that it is accessible for Division review.
  - Construction of a stage I vapor recovery system or component at a site not having an ~~approved authority to construct~~ Authority to Construct ~~plan permit~~, shall be stopped and no further installation work done until an ~~authority to construct~~ Authority to Construct ~~plan approval permit~~ is obtained.
  - An ~~authority to construct~~ Authority to Construct ~~plan approval permit~~ is not transferable.
- F. The Division shall deny an ~~authority to construct~~ Authority to Construct ~~plan application~~ for any of the following reasons:
- Providing incomplete, false, or misleading information; or
  - Failing to meet the requirements stated in this Chapter.
- G. If excavation is involved, the Division may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the ~~authority to construct~~ Authority to Construct ~~plan approval permit~~. The owner or operator of a vapor recovery system or component shall give the Division notice by ~~fax or~~ e-mail at least two business days before the underground piping is complete to schedule the inspection. The Division may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.
- H. After construction is complete, a person who has a valid ~~authority to construct~~ Authority to Construct ~~plan approval permit~~ may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to R3-7-1005.
- I. An ~~authority to construct~~ Authority to Construct ~~plan approval permit~~ expires one year from the date of issue or ~~the completion of construction~~ when a gasoline dispensing site is placed into service following installation or modification of an approved vapor recovery system, whichever is sooner.

### **R3-7-1005. Initial Inspection and Testing**

- A. Within 10 days after beginning the dispensing of gasoline at a site that requires an ~~authority to construct~~ Authority to Construct ~~plan approval permit~~, a person shall provide the Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the ~~authority to construct~~ Authority to Construct ~~plan approval permit~~ and this subsection. The inspection shall be witnessed by the Division at a time approved by the Division and include the following tests:
- A pressure decay test for each vapor control system including underground storage tanks and tank vents using CARB TP-201.3 test procedures, ~~as follows: All test procedures pertaining to stage I vapor recovery systems shall be followed except the~~

~~post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;~~

- ~~a. All test procedures pertaining to stage I vapor recovery systems shall be followed except the post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures;~~
  - ~~b. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1; and~~
  - ~~c. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;~~
  2. A test of each pressure vacuum vent valve using CARB TP-201.1E test procedures;
  3. A Tie-Tank test using CARB TP-201.3C test procedure; ~~and~~
  4. ~~A Static Torque test for each rotatable stage I adaptor using CARB TP-201.1B test procedures; and~~
  - 4.5. Procedures specified by a manufacturer or CARB for testing the vapor recovery system.
- B.** If there is a difference between a testing contractor's test results and the Division's test results, the Division's test results prevail.
- C.** If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain ~~out-of-service~~ out of service until the vapor recovery system and component pass all the appropriate tests in subsection (A).
- D.** A person who cancels an initial inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Division shall take enforcement action if a person fails to comply with this Section.
- E.** A person shall notify the Division when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Division approves the reinspection date and time.
- F.** If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Division shall fail the initial inspection of that site.
- G.** If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
1. The Division shall take enforcement action if the person fails to timely reschedule the inspection.
  2. The registered service agency shall notify the Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
  3. The Division shall notify the registered service agency within five business days, by ~~fax or~~ e-mail, whether it approves the inspection date and time.

### **R3-7-1006. Fee**

~~The authority to construct~~ Authority to Construct ~~plan approval~~ permit fee is \$250.

### **R3-7-1007. Operation**

- A.** The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 3, Chapter 19, Article 7, and this Article.
- B.** The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or Division approval under A.R.S. § 3-3512 for that system and these rules.
- C.** The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.
- D.** The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or component if one or more of the following system or component defects occur:
1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;
  2. Vent pipes do not meet the CARB-specified paint color code specified in R3-7-1004(D)(13);
  3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:
    - a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
    - b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
    - c. Coaxial stage I is not equipped with a functioning CARB-approved poppeted fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or
    - d. A fill tube is missing, broken, or not sealed; has holes or damaged overfill prevention; or the high point of the bottom opening is more than six inches above the tank bottom;
  4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
  5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
  6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the ~~authority to construct~~ Authority to Construct permit for that system is missing, disconnected, or malfunctioning.

- E. For proper operation of a stage I vapor recovery system or component under A.R.S. § 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.
- F. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

**R3-7-1008. Training and Public Education**

Each owner or operator of a gasoline dispensing site using a stage I vapor recovery system or component shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training onsite and make the documentation available to the Division ~~on~~ within two business days of a request.

**R3-7-1009. Recordkeeping and Reporting**

- A. The owner or operator of a gasoline dispensing site employing a stage I vapor recovery system or component in area A shall maintain records of the inspections done under R3-7-1007.
- B. The owner or operator of a gasoline dispensing site employing a stage I vapor recovery system or component in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.
- C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § 3-3512(B) from requirements to install and operate a stage I vapor recovery equipment system or component shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the Division within ~~24 hours~~ two business days after request. The owner or operator shall submit to the Division the throughput information required under R3-7-1002(B). If any throughput requirement provided in A.R.S. § 3-3512(B) and this Article is exceeded for any month, the owner or operator shall notify the Division in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system or component conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.
- ~~D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under R3-7-913 shall maintain a copy of the decommissioning checklist required under R3-7-913(I) for three years.~~
- ~~E.D.~~ Except as specified in subsection (D), the The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Division upon request.

**R3-7-1010. Annual Testing and Inspection**

- A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by ~~fax or~~ e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Division approves the inspection date and time.
- B. The annual inspection shall include the tests defined in R3-7-1005(A)(1) through ~~(3)~~ (4) that pertain to the specific vapor recovery system installed.
- C. To verify proper operation of a vapor recovery system, the Division may perform or may require registered service representatives to perform additional tests under ~~R3-7-1005(A)(4)~~ R3-7-1005(A)(5) during the annual inspection and testing. The Division shall provide registered service agencies with six months' notice before requiring additional annual testing under ~~R3-7-1005(A)(4)~~ R3-7-1005(A)(5).
- D. If there is a difference between a testing contractor's test results and the Division's test results, the Division's test results prevail.
- E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain ~~out of service~~ out of service until the vapor recovery system and component pass all tests required under subsection (B).
- F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.
- G. A person shall notify the Division when a stage I vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the Division approves the reinspection date and time.
- H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the Division issues to registered service agencies.
- I. A person that cancels an annual inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by ~~fax or~~ e-mail, of its approval of the inspection date and time. The Division shall take enforcement action if a person does not comply with this subsection.
- J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

**R3-7-1012. Enforcement**

If the Division finds that a stage I vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title 3, Chapter 19, the Division shall issue to the owner or operator an administrative order and place a ~~stop-sale, stop-use~~ Stop-Sale, Stop-Use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a ~~stage II~~ stage I vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title 3, Chapter 19 and this Chapter before the vapor recovery system or component is placed in service.

**R3-7-1013. Stage II Vapor Recovery**

If the Division identifies a gasoline dispensing site operating a stage II vapor recovery system within an ozone nonattainment area designated as moderate, serious, severe, or extreme by the EPA under section 107(d) of the Clean Air Act or in area A after September 30, 2018, the Division shall issue an administrative order to require that the stage II vapor recovery system be decommissioned within three months after identification, and may impose a civil penalty under A.R.S. §§ 3-3473 and 3-3475 ~~and require that the stage II vapor recovery system be decommissioned within three months after identification. Each day the stage II vapor recovery system is not decommissioned after the time specified in the administrative order constitutes a separate violation for the purpose of calculating the civil penalty under A.R.S. § 3-3475.~~

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>

## TITLE 3. ARIZONA DEPARTMENT OF AGRICULTURE

### CHAPTER 7. DEPARTMENT OF AGRICULTURE

#### WEIGHTS AND MEASURES SERVICES DIVISION

#### A. Economic, small business and consumer impact summary:

##### 1. Identification of the rulemaking:

In this rulemaking, the Department amends the rules in Title 3, Chapter 7 related to the Department of Agriculture, Weights and Measures Services Division, including:

- Updating the rules in response to a proposal submitted by industry stakeholders to allow the sale of E15 motor fuel (a combination of 85% gasoline and 15% ethanol) within the Cleaner Burning Gasoline (“CBG”)-covered area. The CBG-covered area includes Maricopa County and portions of Pinal and Yavapai Counties, consisting of approximately 60 percent of gasoline sales in the state. E15 is already allowed to be sold in Arizona outside of the CBG-covered area.
- Amending rules to complete the proposed course of action noted in the recent Five-Year Review Report for Title 3, Chapter 7 to provide clarity and consistency with Arizona Revised Statutes, federal standards, and industry standards.
- Streamlining rules to reduce reporting requirements and other regulatory burdens without changing the air quality and/or consumer benefits associated with the programs.
- Updating requirements to remove stage II vapor recovery provisions following the decommissioning of such equipment in 2018, and updating testing methods for stage I vapor recovery.

The Department has conducted an extensive review of the proposed rules with interested stakeholders and taken into consideration numerous comments. Specific updates to the rules include:

- Removal of defined terminology that is no longer used within the rules;
- Streamlining of rules relating to administrative enforcement action to place emphasis on statutes that outline the limits for enforcement action and civil penalties;
- Incorporating requirements for CBG in area C provided by A.R.S. §3-3494.

- Incorporation of the latest edition of NIST handbooks that outline commercial device, method of sale, and packaging requirements;
- Clarifying administrative hearing procedures and the process for motion for rehearing or review;
- Clarifying the process for licensing changes;
- Requiring, upon sale of the commercial device, disclosure that a device has been labeled with an Out-of-Service or Stop-Sale, Stop-Use tag;
- Including requirements that a registered service agency file documentation with the Department when using field calibration standards or vapor recovery test equipment belonging to another registered service agency;
- Reorganization of rules to place commercial device, packaging, and retail pricing requirements in the appropriate Articles;
- Updating retail pricing inspections for clarity and better defining when an inspection is performed for educational purposes;
- Removal of unnecessary requirements for commercial devices and third-party registered service agencies;
- Updating motor fuel specifications and test methods to the most recent version;
- Updating motor fuel signage and description requirements for clarity;
- Addition of requirements to allow for the sale of E15 motor fuel in the Cleaner Burning Gasoline area, including certification, oxygenate blending, and survey procedures;
- Removal of Arizona-specific registration for biofuel blenders, producers, and suppliers;
- Streamlining of certification and reporting requirements for Cleaner Burning Gasoline suppliers;
- Reorganizing and updating CBG survey requirements for clarity;
- Providing an exemption from the summer and winter survey requirements for registered suppliers that provide less than 1,000,000 gallons of CBG to the CBG-covered area per year;
- Updating CBG test methods to provide maximum flexibility for registered suppliers;
- Removal of the averaging compliance option for CBG certification;
- Incorporation of the CARB Static Torque Test as part of initial and annual vapor recovery testing requirements to help protect air quality; and

- General reorganization and editorial changes to improve the clarity and consistency of the rules.
- a. **The conduct and its frequency of occurrence that the rule is designed to change:**

This rulemaking is primarily designed to incorporate language that will allow the sale of E15 motor fuel within the CBG-covered area. The Department has worked closely with the Arizona Department of Environmental Quality (“ADEQ”) and the Environmental Protection Agency (“EPA”) regarding the proposed rulemaking. Following rule completion, ADEQ will submit a revision of the State Implementation Plan for approval by EPA. Currently, E15 motor fuel is prohibited from sale within the CBG-covered area, but is allowed to be sold in the remainder of the state. In addition, the rulemaking is intended to:

  - Reduce the burden on regulated parties by removing requirements that are no longer relevant;
  - Incorporate the CARB Static Torque Test procedure as an additional annual test requirement for vapor recovery systems to prevent gasoline vapor emissions and protect air quality; and
  - Streamline language and improve the clarity and consistency of the rules.
- b. **The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.**

If these rules are not adopted, motor fuel retailers and consumers may not benefit from any economic opportunities created by allowing the sale of E15 motor fuel within the CBG-covered area. In addition, many provisions for streamlining the rules and improving the overall clarity and consistency of the rules will not be implemented, which may continue unnecessary burden to regulated parties and generate confusion in interpretation of the rules.
- c. **The estimated change in frequency of the targeted conduct expected from the rule change:**

Approval of these rules will provide the opportunity for E15 motor fuel to enter the Arizona marketplace in the CBG-covered area, which may create new economic opportunities and increase the variety of emissions-reducing motor fuels that consumers can choose from at retail. In addition, the rules will continue necessary protections for consumers and businesses while reducing the burden imposed by the rule, and making the rules easier to read and understand.

**2. Brief summary of the information included in the economic, small business and consumer impact statement:**

The Department has revised rules to clarify many areas regulating commercial devices, weighmaster requirements, fuel quality, and vapor recovery. The Department licenses over 120,000 commercial devices at over 12,500 locations, in addition to individual licenses issued to 2,585 weighmasters, 29 vapor service representatives, 144 registered service agencies, 511 registered service representatives, as well as other regulated entities. The businesses that are impacted vary from small business to large corporations. In all cases, the changes to this rule are being implemented to have the least impact on business operations, while continuing to protect air quality and equity in the marketplace.

**3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

Name: Kevin Allen

Address: Department of Agriculture  
Weights and Measures Services Division  
1802 W. Jackson Street, #78  
Phoenix, AZ 85007

Telephone: (480) 848-1709

E-mail: kallen@azda.gov

Website: agriculture.az.gov

**B. Economic, small business and consumer impact statement:**

**1. Identification of the rulemaking:**

See paragraph (A)(1) above.

**2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:**

Motor fuel suppliers, retailers, and consumers will be directly affected by the rulemaking, and may directly benefit from economic opportunities created by allowing the sale of E15 motor fuel in the CBG-covered area. Since the sale of E15 motor fuel is a marketing decision, there are no mandatory costs; however, gasoline retailers that decide to sell this

type of gasoline may incur costs to comply with the rules and to ensure their gasoline storage tank systems and dispensers are compatible with E15 motor fuel.

Registered suppliers and biofuel producers will benefit through the removal of unnecessary reporting requirements. There may be a benefit to registered suppliers that certify CBG by allowing the use of additional test methods and a model (CARBOB model) for certification of CBG. The use of this model has been pending approval from EPA. With the immediate allowance of the use of the model, analysis of approximately 1,000 samples per year may be avoided through the use of the model. If EPA approves the State Implementation Plan prior to the effective date of this rulemaking, the use of the model will be allowed at that time. Additionally, allowing the use of additional test methods approved by EPA and CARB allows registered suppliers flexibility, saving both money and time.

All persons, including regulated parties, will benefit from rules that are simplified and have improved clarity, while continuing to uphold maximum protections for consumers, businesses, and the environment.

Motor fuel retailers who operate gasoline vapor recovery systems in the Phoenix and Tucson metropolitan areas may bear minimal, but additional testing costs and equipment replacement costs (for failing equipment) by mandating the CARB Static Torque Test as part of the initial and annual vapor recovery test requirements. In addition, vapor recovery registered service agencies and the Department may bear minimal costs to procure the equipment necessary to perform the CARB Static Torque Test and training necessary to conduct the test.

**3. Analysis of costs and benefits occurring in this state:**

Cost-revenue scale. Annual costs or revenues are defined as follows:

**Minimal**      Less than \$50,000

**Moderate**    \$50,000 to \$150,000

**Substantial**   \$150,000 or more

**a. Probable costs and benefits to the Department of Agriculture and other agencies directly affected by the implementation and enforcement of the rulemaking:**

Implementation of the rule may add minimal costs to the Department of Agriculture through sampling and testing of E15 motor fuel to ensure compliance with applicable fuel quality and performance specifications and training required to implement the CARB Static Torque Test. However, the Department will benefit by streamlining of the rules, which decreases the amount of time required to implement and enforce the rules. In particular, simplification and/or elimination of reporting requirements for CBG producers and biofuels producers may reduce the amount of administrative time required by Department staff to oversee these programs. ADEQ will have administrative costs related to the development and submittal of the State Implementation Plan Revision, which will be required for approval by EPA. The Department does not expect that the rulemaking will impose additional costs on other agencies.

**b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking:**

Political subdivisions with stage I vapor recovery in the Phoenix and Tucson metropolitan areas will realize a minimal cost to conduct the CARB Static Torque Test on new and modified installations, as well as during annual testing in the Phoenix metropolitan area.

Political subdivisions in the CBG-covered area may benefit from the option to use E15 motor fuel.

**c. Probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking:**

Retailers may directly benefit from economic opportunities created by allowing the sale of E15 motor fuel in the CBG-covered area.

Motor fuel retailers who operate gasoline vapor recovery systems in the Phoenix and Tucson metropolitan areas may have minimal additional testing costs with the requirement to complete the CARB Static Torque Test as part of the initial and annual vapor recovery test requirements. In addition, vapor recovery registered service agencies may have minimal costs to procure the equipment necessary to perform the CARB Static Torque Test and training required to implement the test.

Registered suppliers and biofuel producers will benefit from reduced reporting requirements, which may decrease the amount of staff resources dedicated to ensuring compliance with Department requirements. More flexible test methods for laboratory testing, and the option to use a model in lieu of laboratory testing for certification of CBG, will benefit registered suppliers.

All businesses regulated by the Department will benefit from rules that are simplified and have improved clarity and consistency.

**4. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rulemaking:**

The Department does not expect the rulemaking to have an impact on private or public employment.

**5. Statement of the probable impact of the rulemaking on small businesses:**

**a. Identification of the small businesses subject to the rulemaking:**

Small businesses subject to the rulemaking include, but are not limited to, motor fuel dispensing sites, retailers, grocers, markets, biofuel producers and blenders, motor fuel distribution terminals, and other operators of commercial weighing and measuring devices.

**b. Administrative and other costs required for compliance with the rulemaking:**

The Department does not expect additional administrative or other costs that would be required for compliance with the rulemaking.

**c. Description of the methods that the Department may use to reduce the impact on small businesses:**

The Department does not expect the rulemaking to have a significant impact on small businesses and therefore has not developed methods to reduce any impacts.

**d. Probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:**

The Department regulates businesses to promote equity in the marketplace and protect air quality. These rules will continue those protections to consumers and individuals. The allowance of the sale of E15 motor fuel in the CBG-covered area may provide consumers with an additional gasoline choice for their vehicles.

**6. Statement of the probable effect on state revenues:**

The Department does not anticipate any effect on state revenues because of the rulemaking.

**7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:**

The Department consulted with the stakeholders to evaluate the rules in an effort to reduce the regulatory burden while continuing protections for consumers and air quality.

As such, the Department has chosen the least intrusive and costly methods.

**C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:**

None.

### § R3-7-101. Definitions

The definitions in A.R.S. §3-3401, 3-3414, 3-3436, and 3-3511 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a corrective action notice that the Division issues for a violation of A.R.S. Title 3, Chapter 19, or this Chapter, that orders a person to:
  - a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
  - b. Stop selling a commodity or liquid fuel until the person provides documentation to the Division that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;
  - c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the Division that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;
  - d. Stop performing weighmaster, deputy public weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the Division that the person is complying with the requirements of A.R.S. Title 3, Chapter 19, and this Chapter;
  - e. Comply with labeling, policies, and cash register indicator displays according to A.R.S. Title 3, Chapter 19, and this Chapter;
  - f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title 3, Chapter 19, and this Chapter;
  - g. Excavate a vapor recovery site according to R3-7-104(L); or
  - h. Comply with scheduling a test according to R3-7-104(L).
3. "Application" means, for purposes of R3-7-108, forms and all documents and additional information the Division requires an applicant to submit when applying for a license.
4. "ASTM" means American Society for Testing and Materials.
5. "Area A" has the same meaning as in A.R.S. §49-541.

6. "Area B" has the same meaning as in A.R.S. §49-541.
7. "CARB" means the California Air Resources Board.
8. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
9. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
10. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
11. "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
  - a. At a location where there was not one previously;
  - b. To replace all gasoline storage tanks; or
  - c. To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.
12. "EPA" means the United States Environmental Protection Agency.
13. "Gasoline vapors" means volatile organic compounds in a gaseous state.
14. "Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2018 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.
15. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2018 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.

16. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (January 2018 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.
17. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.
18. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.
19. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.
20. "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.
21. "NCWM" means the National Conference on Weights and Measures.
22. "NIST" means the National Institute of Standards and Technology.
23. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.
24. "Out-of-service tag" means a red rejection tag that signifies a commercial device does not meet the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter.
25. "Person" as defined in A.R.S. §3-3401, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.
26. "Placed in service" means the certification by a registered service agency or representative that a commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter, and may be used, unless the Division orders otherwise.

27. "Placed-in-service report" means the form that a registered service representative completes and submits to the Division after placing a commercial device in service.
28. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.
29. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.
30. "Seal of authority" means a stamp or press of the Division's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.
31. "Service Counter" means a display staffed by a sales associate and requires a customer to receive assistance in order to purchase a product.
32. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the Division.
33. "Stage II vapor recovery" means a system where at least ninety percent by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system.
34. "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.
35. "Third-party registered service agency" means a registered service agency that performs work under contract for any business or company.
36. "Underground storage tank" means a tank as described in A.R.S. § 491001.
37. "Unit" means a quantity adopted as a standard of measurement.
38. "Vapor recovery registered service representative" means an individual to whom the Division has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title 3, Chapter 19 or this Chapter including annual vapor-recovery tests.

39. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with A.R.S. Title 3, Chapter 19, Handbook 44, CARB Executive Orders, or this Chapter.

40. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the Division, which certifies the accuracy of the weight of the commodity measured.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.

**§ R3-7-103. Licensing and Fees**

A. A license is effective on the first day of the month following the date that the license application is filed with the Division. If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.

B. A payment is delinquent if not received or postmarked on or before the due date. The Division shall not process a license or renewal application for which payment is delinquent.

C. If the Division receives payment for a license that excludes the payment of applicable late fees or past due civil penalties, the Division shall apply the license fee payment to the licensee's account and issue a separate invoice for the additional monies owed to the Division. The license will not be issued by the Division until all fees due are paid.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-104. Administrative Enforcement Action**

A. The Division shall take progressive enforcement action for a violation of A.R.S. Title 3, Chapter 19, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.

B. The Division shall make available a copy of its inspection report to the person who owns or operates a location that the Division inspects. The report shall include the inspection results and violation. The Division shall send a copy of the inspection report to the owner of a location by e-mail if the owner has provided an e-mail address to the Division. Inspection results and violations shall be posted on the Division website.

C. The person who owns or operates a location inspected by the Division may request a hearing under R3-7-109 to dispute the inspection results, violation, or enforcement action.

D. The Division shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.

E. A maximum civil penalty may be doubled as stated in A.R.S. §3-3475(C).

F. Commercial device.

1. The Division may place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.

2. The Division may confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without Division authority.

3. The Division may condemn and confiscate a weight, measure, or other commercial device that the Division determines is incorrect and not capable of compliance with Handbook 44.

4. The Division shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in A.R.S. Title 3 Chapter 19, Handbook 44 or this Chapter and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.

a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.

b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter.

5. The Division shall issue a warning tag when a commercial device is not in compliance with the requirements in A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter and the lack of compliance creates a situation favorable to the consumer. The Division shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter.

6. The Division may issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.

7. The Division shall issue an out-of-service tag if a Division inspector cannot conduct an inspection of a commercial device because of malfunction, abnormal performance, or a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.

8. The Division shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero as prescribed in Handbook 44.

9. The Division shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The Division shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.

10. The Division shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The Division shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.

11. In addition to any enforcement action under subsections (F)(1) through (10):

a. If the Division finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title 3, Chapter 19, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:

- i. The Division may impose a civil penalty up to \$300 on the person who owns or operates the commercial device; and
  - ii. The Division may impose a civil penalty up to \$500 on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.
- b. If the Division finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:
- i. The Division may issue an administrative order to the person at the conclusion of the inspection and impose a civil penalty up to \$300; and
  - ii. The Division may issue an administrative order to the person and impose a civil penalty up to \$500 at each reinspection until the person complies with Handbook 44 and this Chapter.
- G. Public and deputy public weighmaster.
- 1. The Division may issue an administrative order if a public weighmaster's:
    - a. Weigh tickets are not in numbered sequence or are missing,
    - b. The seal, press, or electronic seal is not readable, or
    - c. Records are not maintained according to R3-7-505.
  - 2. The Division may issue an administrative order and impose a civil penalty up to \$500 on a public weighmaster if:
    - a. The public weighmaster's weigh tickets contain inaccurate information,
    - b. The public weighmaster violates an administrative order,
    - c. The public weighmaster misuses a seal or press or has an unauthorized seal or press; or
    - d. The public weighmaster misuses an electronic seal or signature.
  - 3. The Division shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.
  - 4. The Division shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.

5. The Division shall issue an administrative order and a civil penalty up to \$300 to a person who performs public weighmaster duties without a license.

6. If a public weighmaster permits an unlicensed person to perform deputy public weighmaster duties, the Division may:

a. Impose a civil penalty up to \$300 on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties;

b. Impose a civil penalty up to \$500 on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties; and

c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties more than twice.

#### H. Packaging.

1. The Division shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:

a. Returning the package to the packer or manufacturer,

b. Labeling the package to reflect its correct quantity,

c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or

d. Repackaging the commodity so the package contains the quantity represented.

2. In addition to an administrative order, the Division may impose a civil penalty up to \$500 per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

#### I. Price verification.

1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.

2. The Division shall issue a stop-sale, stop-use tag to a person who fails a price verification inspection if the violation cannot be corrected within 30 minutes of the Division completing the inspection.
    - a. The Division may impose a civil penalty up to \$100 per violation on a person who fails a reinspection if the Division finds more than one item at more than its posted price.
    - b. The Division may impose a civil penalty up to \$200 per violation on a person who fails a second reinspection. The Division shall increase the per violation civil penalty imposed by \$100 for each subsequent reinspection until the violation is corrected.
  3. If the Division receives and substantiates a complaint about a person against whom the Division took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is \$100 more than the civil penalty that the Division previously imposed against this person.
  4. The Division may issue a warning tag to a person who does not have a written price-error policy. The Division may impose a civil penalty up to \$500 if the person does not have a written price-error policy upon reinspection.
  5. The Division shall issue a warning tag to a person who does not have a price display visible to the consumer at a check-out location. The Division shall issue an out-of-service tag if the person does not have a price display visible to the consumer at a check-out location upon reinspection.
- J. Price posting.
1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
  2. The Division shall issue a stop-sale, stop-use tag to a person who fails a price posting inspection if the violation cannot be corrected within 30 minutes of the Division completing the inspection.
  3. The Division may impose a civil penalty up to \$50 for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.
  4. The Division may impose a civil penalty up to \$100 for each inspected lot not priced if a person fails a second reinspection.

5. If the Division receives and substantiates a complaint about a person against whom the Division took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is \$100 more than the civil penalty that the Division previously imposed against this person.

**K. Fuel quality and labeling.**

1. The Division shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title 3, Chapter 19, or this Chapter. The Division shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.

2. The Division may issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title 3, Chapter 19, or this Chapter. The Division may impose a civil penalty up to \$300 if the person does not correct the labeling or signage violation within the time specified in the administrative order.

3. The Division may issue an administrative order and impose a civil penalty up to \$500 per octane level or fuel grade to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:

- a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,
- b. Selling the motor fuel at the correct octane level,
- c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,
- d. Removing all water from the storage tank or emptying the tank per R3-7-711 or R3-7-712, or
- e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.

4. The Division may issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the Division's request. The Division may impose a civil penalty up to \$300 on a person who provides the requested documentation between 24 and 72 hours. The Division may impose a civil penalty up to \$500 on a person who does not provide the requested documentation within 72 hours.

L. Vapor recovery.

1. The Division may issue an administrative order to stop construction at a vapor recovery site and impose a civil penalty up to \$500 on a person who:

a. Begins construction or makes a major modification without an authority to construct plan approval,

b. Does not comply with the authority to construct plan approval, or

c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:

i. The vapor recovery system and its components comply with A.R.S. Title 3, Chapter 19, and this Chapter; and

ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title 3, Chapter 19, and this Chapter.

2. The Division may issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a Division pre-burial inspection and may impose a civil penalty up to \$500 civil penalty if the excavated system does not pass required vapor recovery tests according to A.R.S. Title 3, Chapter 19, and this Chapter.

3. The Division shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The Division shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.

4. The Division may impose a civil penalty up to \$100 on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.

5. The Division may issue a warning tag to a person whose vapor recovery system labeling does not comply with R3-7-713. The Division may issue a stop-sale, stop-use tag and impose a civil penalty up to \$500 on a person who does not correct a labeling violation within the time specified on a warning tag.

6. The Division shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under R3-7-905, R3-7-910, R3-7-1005, or R3-7-1010. If the test failure is isolated to a system component, the Division's

stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.

M. The Division may impose a civil penalty up to \$500 and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The Division may impose a civil penalty up to \$500 and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.

N. Registered service agency and registered service representative.

1. If a registered service agency submits to the Division an inaccurate or incomplete placed-in-service or test report, the Division may impose a civil penalty up to \$50 on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.

2. The Division may impose a civil penalty up to \$300 on a registered service representative who incorrectly:

- a. Installs a commercial device,
- b. Repairs a commercial device,
- c. Tests a vapor recovery system, or
- d. Repairs a vapor recovery system.

3. If an unlicensed person represents itself as a registered service agency, the Division may:

- a. Issue an administrative order,
- b. Impose a civil penalty up to \$500 and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
- c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.

4. The Division may issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The Division may impose a civil penalty up to \$300 on the registered service agency for which the unlicensed individual works.

5. The Division may issue an administrative order if a registered service representative places a commercial device into service without Division

authorization. The Division may impose a civil penalty up to \$500 on the registered service agency whose representative places a commercial device into service without Division authorization.

6. The Division may impose a civil penalty up to \$500 on a registered service agency whose registered service representative uses a metrology standard or vapor recovery testing equipment that is not certified according to this Chapter and, as applicable, CARB test methods. The Division may confiscate a metrology standard or vapor recovery testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The Division shall return the standard or equipment when it is properly certified.

7. The Division shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title 3, Chapter 19, and this Chapter:

- a. Notify the Division of a test date and time,
- b. Begin a test at the approved time,
- c. Appear for a witnessed test,
- d. Close a vapor recovery system for repairs if the system fails, or
- e. Perform a test.

8. The Division may impose a civil penalty up to \$300 on a vapor RSA that violates subsections (M)(7)(a), (b), (d), or (e). The Division may impose a civil penalty up to \$300 on a vapor recovery registered service agency that violates subsection (M)(7)(c) twice in 12 months.

9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the Division may:

- a. Impose a civil penalty up to \$300 on the registered service agency for the first violation, and
- b. Impose a civil penalty up to \$500 on the registered service agency for each subsequent violation by the registered service representative.

10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title 3, Chapter 19, or this Chapter, the registered service representative shall:

- a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by R3-7-910;
  - b. Notify the Division of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and
  - c. Notify the Division of the time of the test required by R3-7-910 or R3-7-1010 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.
11. If a registered service representative fails to comply with subsection (M)(10)(b) or (c), the Division may:
- a. Impose a civil penalty up to \$300 on the registered service representative;
  - b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and
  - c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).
12. If a registered service representative fails to notify the Division of a non-compliant commercial device under R3-7-602(B)(1)(f), the Division may impose a civil penalty up to \$300.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct**

A. For each type of license, renewal, or authority issued by the Division, the overall time-frame described in A.R.S. §41-1072(2) is set forth in Table 1.

B. For each type of license, renewal, or authority issued by the Division, the administrative completeness review time-frame described in A.R.S. §41-1072(1) is set forth in Table 1 and begins on the date the Division receives an application.

1. If the application is not administratively complete, the Division shall send a deficiency notice to the applicant.

a. The deficiency notice shall state each deficiency and the information needed to complete the application.

b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Division the missing information specified in the deficiency notice. The time-frame for the Division to finish the administrative completeness review is suspended from the date the Division mails or e-mails the deficiency notice to the applicant until the date the Division receives the missing information.

c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Division shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.

2. If the application is administratively complete, the Division shall send a written notice of administrative completeness to the applicant. If the Division, within 10 days of submittal, fails to send a written notice of administrative completeness or deficiency notice outlined in subsection (B)(1), the application shall automatically be deemed administratively complete.

C. For each type of license, renewal, or authority issued by the Division, the substantive review time-frame described in A.R.S. §41-1072(3) is set forth in Table 1 and begins on the date the Division sends written notice of administrative completeness to the applicant.

1. During the substantive review time-frame, the Division may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information.

**Ariz. Admin. Code R3-7-108 Time-frames for Licenses, Renewals,  
and Authorities to Construct (Arizona Administrative Code (2022  
Edition))**

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The time-frame for the Division to finish the substantive review is suspended from the date the Division mails or e-mails the request until the Division receives the information.

2. If the applicant does not submit the requested additional information within the time-frame in Table 1, the Division shall issue a written notice informing the applicant that the application is deemed withdrawn. The applicant may request in writing that the Division deny the application within 15 days of the date of the notice of withdrawal. An applicant who desires to reapply shall begin the application process anew.

3. The Division shall issue a written notice of denial of license, renewal, or authority if the Division determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title 3, Chapter 19, and this Chapter for a license, renewal, or authority. The notice of denial shall include:

a. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and

b. The name and telephone number of a Division employee who can answer questions regarding the application process.

4. If the applicant meets all of the substantive criteria required by A.R.S. Title 3, Chapter 19, and this Chapter for a license, renewal, or authority the Division shall issue the license, renewal, or authority to the applicant.

D. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the postmark date.

E. In computing any time period prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays and holidays.

F. An applicant whose license, renewal, or authority is denied has a right to a hearing, an opportunity for rehearing, and if the denial is upheld, judicial review pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10, and A.R.S. Title 12, Chapter 7, Article 6.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**Ariz. Admin. Code R3-7-108 Time-frames for Licenses, Renewals,  
and Authorities to Construct (Arizona Administrative Code (2022  
Edition))**

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**§ R3-7-109. Administrative Hearing Procedures**

A.R.S. Title 41, Chapter 6, Articles 6 and 10 apply to the Division's hearings.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-110. Motion for Rehearing or Review**

A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Division who is aggrieved by a decision rendered in the case may file with the Division, a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds for the motion.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Division. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Division may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may only be granted for any of the following reasons materially affecting the moving party's rights or ability to receive a fair hearing:

1. Any irregularity in the hearing, order, or abuse of discretion by the administrative law judge or the Division.
2. Misconduct of the Division, the administrative law judge, or the prevailing party.
3. Accident or surprise that could not have been prevented by ordinary prudence.
4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the original hearing.
5. Excessive or insufficient penalties.
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.
7. That the decision is not justified by the evidence or is contrary to law.

D. The Division may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the Division may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.

E. The Division, within the time for filing a motion for rehearing or review under this rule, may order a rehearing or review for any of the reasons set

forth in subsection (C), after giving the parties notice and an opportunity to be heard.

F. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party has 15 days from the date of service to serve opposing affidavits. The Division may extend the period to respond up to 20 days for good cause, or by written stipulation of the parties. If the Division permits reply affidavits, the replying party has five days in which to serve them.

G. If the Division makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Division may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Division's final decision.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**Table 1 Time-frames (calendar days) (Arizona Administrative Code (2022 Edition))**

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**TABLE 1. Time-frames (calendar days)**

<b>Type of License</b>	<b>Authority</b>	<b>Administrative Completeness Review</b>	<b>Response to Completion Request</b>	<b>Substantive Completeness Review</b>	<b>R A I</b>
Commercial Device	R3-7-201	14	28	30	3
Public Weighmaster	R3-7-501	14	28	30	3
Registered Service Agency/Representative	R3-7-601	14	28	30	3
Authority to Construct	R3-7-904 R3-7-1004	14	28	30	3

**History:**

Article 1, Table 1, Time-frames (in days), recodified from 20 A.A.C. 2, Article 1, Table 1, Time-frames (in days), at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-201. Licensing Process**

Before using a commercial device, a person or a contracted registered service representative shall apply for a license for the commercial device. The commercial device may be used without a license for up to 30 days after an application is filed with the Division. The application shall be on a form supplied by the Division that includes:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of the location where the commercial device will be operated;
3. A description of the commercial device;
4. The applicant's signature; and
5. An e-mail address for the owner or operator for the Division to provide licenses, invoices, inspections and reports, enforcement action, and other notifications.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-203. Approval, Installation, and Sale of Devices**

A. A commercial device installed or placed in use after January 1, 1975, shall have an NCWM National Type Evaluation Program (NTEP) Certificate of Conformance or have a certificate of approval from the California Type Evaluation Program. NTEP Certificate of Conformance issuance may be verified at the NCWM website: [http://www.ncwm.net/ntep/cert\\_search](http://www.ncwm.net/ntep/cert_search) .

1. If a commercial device has been continuously licensed, or evidence shows it has been in use by the owner in Arizona since January 1, 1975, the commercial device is exempt from NCWM or California Type Evaluation Program prototype approval.

2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a Division inspection, the Division shall issue an out of service tag or confiscate the device per R3-7-104(F)(3) and revoke the commercial device license. A person shall no longer use the device commercially.

B. The seller of a commercial device that is remanufactured for the purpose of commercial sale shall mark the commercial device as remanufactured.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-302. Handbook 130 and Handbook 133**

A. A person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130, except as otherwise stated in this Chapter. A person shall ensure that packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in this Chapter.

B. A retail seller shall ensure that a package that is offered for sale in a variable weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:

1. Clearly labels the price-per-pound where the packaged produce is displayed, and
2. Deducts a tare for the packaging from the gross weight at the time of sale.

C. A retail seller shall price a commodity at the date and time that it is ordered by a customer.

D. A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retailer shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.

E. A person who owns or operates a plant nursery shall label each commodity with its identity and price, or post a sign with this information adjacent to the point of display.

F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.

G. Items in or behind a service counter that can be sold only with the assistance of a sales associate are not required to have a price displayed. If a price is displayed, it must meet the requirements of this Chapter.

**History:**

**Ariz. Admin. Code R3-7-302 Handbook 130 and Handbook 133  
(Arizona Administrative Code (2022 Edition))**

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Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-402. Price-posting Inspection Procedure and Violation Exceptions**

A. The Division shall choose one item that was used and up to four adjacent items that were not used for a price-verification inspection as the samples for a price-posting inspection.

B. If the Division finds an alleged price-posting violation involving an item used during its price-verification inspection, the Division shall record the price-posting violation on the inspection report.

C. The following are price-posting violations:

1. No price is posted or displayed for an inspected item unless it is not required under subsection (D)(12);
2. Less than 98 percent of the prices of inspected items are posted accurately; or
3. A percentage off is provided, but there is no price displayed for the item on, in, or behind a service counter.

D. The following are not price-posting violations:

1. A price is posted on a shelf where an item is displayed rather than marked on the item individually;
2. A price is posted on the shelf or on a hook in front of or behind a row of items at the farthest left side of all items with the same price for up to 3 feet of shelf space or at the farthest left and farthest right side of the shelf or hooks with the same priced items. For items of the same price, the uniform price codes may differ for the commodities with prices labeled in this manner, as long as the price posted is a generic price and does not refer to a specific product;
3. A price is posted on a vertical display in a location clearly visible to the consumer for items of the same price;
4. Self-contained refrigerated coolers may have prices posted on the inside or outside of the refrigerator doors located on the left, right, or center of the shelving units in a location clearly visible to the consumer.
5. A storage area that is posted as a storage area for which a customer should ask for assistance;

**Ariz. Admin. Code R3-7-402 Price-posting Inspection Procedure  
and Violation Exceptions (Arizona Administrative Code (2022  
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6. A restocking area that is posted as a restocking area for which a customer should ask for assistance;
7. A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;
8. An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask for price information assistance about an item in the display;
9. A menu-type sign at a point of display that lists the name and price of every item at the point of display in legible text. A menu-type sign may also be used to display single-item purchase prices in areas where space is limited, or used to display a price for purchase of multiple items and single-item purchase prices at the point of display as long as it is located at, above or near the point of display;
10. A point of display contains more than one item posted with the manufacturer's name or logo and the price and name of each item in the point of display is posted;
11. A price is posted only at each entrance to a store but that price is the price of each item in the store, or at each entrance to a department within a store but that price is the price of each item in the department;
12. A notice states that there is an additional charge based on an item's size and each size and the additional charge for each size is posted; and
13. An item that does not have a price and is located in or behind a service counter and available only with the assistance of a sales associate. If a price is displayed, it must meet the requirements of this Chapter.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-501. Qualifications; License and Renewal Application Process**

A. In addition to the requirements of A.R.S. §3-3453, to be a public weighmaster or a deputy public weighmaster, a person shall:

1. Be at least 18 years old,
2. Be able to operate a scale accurately, and
3. Be able to execute weight certificates properly.

B. A person shall not perform the duties of a public weighmaster until the person passes the written weighmaster examination administered by the Division with a minimum score of 75 percent. A person may not take the examination more than three times in six months and must wait 7 days before retaking the exam.

C. A person that meets the qualifications for public weighmaster or deputy public weighmaster may apply for a license on a form supplied by the Division. A separate application shall be submitted for each location the public weighmaster or deputy public weighmaster will issue weight tickets.

1. The application form includes:

- a. The applicant's name, address, and telephone number;
- b. A statement by the applicant that the applicant knows and understands weighmaster laws and rules;
- c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
- d. The applicant's signature.

2. The public weighmaster's application form also includes:

- a. The name of each deputy public weighmaster operating at each location;
- b. A statement that the public weighmaster understands they are responsible to ensure that any deputy public weighmasters working at the location are adequately trained and licensed;
- c. The name and address of the scale; and
- d. The scale description.

**Ariz. Admin. Code R3-7-501 Qualifications; License and Renewal  
Application Process (Arizona Administrative Code (2022  
Edition))**

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3. The deputy public weighmaster application shall include a certification that they understand the requirements on a form provided by the Division and be signed by both the public weighmaster and the applicant.

4. An applicant may be required to submit evidence of qualifications.

5. The public weighmaster shall ensure all deputy public weighmasters are licensed for the location prior to their issuance of weight tickets.

6. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. §41-1080.

D. Before the Division issues or renews a public weighmaster or deputy public weighmaster license, the applicant shall pay the required fees and provide information required in A.R.S. Title 3, Chapter 19, and this Chapter.

E. The Division does not charge a fee to process a change in name or address.

F. In the event a public weighmaster leaves employment, a licensed deputy public weighmaster may utilize a public weighmaster stamp which contains only the location identity as issued under R3-7-506(B) for 30 days at a location while a public weighmaster license application is underway. A public weighmaster stamp containing the public weighmaster's name may not be continued to be used following a public weighmaster's departure.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-502. Duties**

A public weighmaster shall:

1. Be responsible for the daily operation and maintenance of the licensed scale used when performing weighmaster duties;
2. Use scales according to applicable laws and rules;
3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster; and
4. Ensure deputy public weighmasters are licensed prior to their issuance of a weight ticket and cancel deputy public weighmasters licenses within 10 days of their leaving employment to ensure each location has the correct licensed deputy public weighmasters. A deputy public weighmaster license may be canceled by sending an e-mail or other written notification to the Division.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-503. Grounds for Denying License or Renewal; and  
Disciplinary Action**

A. The Division may deny a weighmaster license for any of the following reasons:

1. Providing false or misleading information;
2. Failing to meet the requirements stated in this Article; or
3. Any of the reasons stated in subsections (B)(1) through (9).

B. The Division may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the Division has determined that the public weighmaster:

1. Does not have the ability to weigh accurately;
2. Has not correctly made weight certificates;
3. Has been found to have violated any provision of A.R.S. Title 3, Chapter 19, or this Chapter;
4. Has falsified a weight certificate;
5. Has delegated authority to someone other than a licensed public weighmaster or deputy public weighmaster;
6. Has improperly used a weighmaster's seal of authority;
7. Has presigned certificates for later use;
8. Has issued a weight certificate on which changes or alterations were made; or
9. Has used a scale for public weighing that is not properly licensed.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-504. Scales and Vehicle Weighing**

- A. When making a weight determination, a public weighmaster shall use a weighing device that is suitable for the function.
- B. The public weighmaster shall not use a scale to weigh a load that exceeds the normal or rated capacity of the scale.
- C. The owner or user of a weighing device is responsible for the accuracy of the device used by a public weighmaster. The owner or user shall comply with Handbook 44.
- D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.
- E. The Division shall separately license and regulate each scale location.
- F. A weighmaster shall weigh any vehicle or combination of vehicles on a scale having a platform that fully accommodates the vehicle or combination of vehicles as one unit.
- G. If a combination of vehicles is divided into separate units to be weighed, each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-505. Weight Certificates**

A. In issuing a weight certificate, a public weighmaster shall enter only those weight values that the weighmaster or deputy public weighmaster has accurately and personally determined.

B. A public weighmaster or deputy public weighmaster shall not make any entries on a weight certificate issued by another person.

C. By signing a weight certificate, a weighmaster or the weighmaster's deputy shall be responsible for the accuracy of all entries on the weight certificate.

D. A weight certificate is valid only when properly signed and sealed by the issuing public weighmaster or the deputy public weighmaster. The name and image of the seal of the public weighmaster and deputy public weighmaster may be imprinted electronically on the weighmaster certificate in lieu of a handwritten signature and embossed seal if the electronically imprinted name and seal is that of the weighmaster or deputy public weighmaster who weighed, measured, or counted the commodity. To issue an electronic signature or seal, the weighmaster or deputy public weighmaster shall have an individual login associated with the electronic signature and seal or other security measures in place to prevent non-licensed persons from use.

E. If an error is made on a weight certificate, the weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a certificate.

F. A weight certificate shall state:

1. The date of issuance;
2. The name of the declared owner, agent, or consignee of the material weighed;
3. The accurate weight of the material weighed or counted;
4. The means by which the material is being transported at the time it is weighed or counted;
5. An identification number of the transporting unit, including a license number; and
6. The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the described merchandise

was weighed, counted, or measured by a public or deputy public weighmaster, and when properly signed and sealed, is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law."

7. The printed name, signature, and license number of the public weighmaster or deputy public weighmaster issuing the weight ticket.

G. A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of one year. A weighmaster also shall ensure that weight certificates are consecutively numbered and filed numerically, including voids. A weighmaster shall not use another filing system without Division approval.

H. A public weighmaster is liable for any forged signatures or electronic signatures.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-506. Seal of Authority**

A. A weighmaster shall obtain a seal for the certification of weight certificates at cost through the Division.

B. The Division shall assign a number to a seal identifying the specific location for which the seal is issued.

C. A seal is the property of the state. A weighmaster shall surrender a seal to the Division within 30 days after the weighmaster no longer operates as a licensed public weighmaster if the seal contains the public weighmaster's name. If the seal was issued under R3-7-506(B) and only contains the location identification, it may be retained for use by the next licensed public weighmaster if it is still legible. Illegible seals shall be surrendered to the Division.

D. A public weighmaster shall have one seal for use at each scale location.

E. A seal shall be accessible to the weighmaster and authorized deputies during all business hours at the scale location for the timely and proper certification of weight certificates.

F. A public weighmaster shall keep a seal of authority at each scale location and make it available for inspection by the Division during all business hours.

G. A public weighmaster may recreate the state-assigned seal in an electronic format for use as provided under subsection R3-7-505(D). The Division shall provide a template of seal.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-507. Prohibited Acts**

A. A person shall not:

1. Issue a certified weight certificate without being a licensed public weighmaster or a person properly authorized to act for a public weighmaster;
2. Procure, print, or cause to be printed any public weighmaster weight certificate without being a licensed public weighmaster or a deputy public weighmaster authorized to act for a public weighmaster;
3. Possess unfilled or unused public weighmaster weight certificate forms without being a licensed public weighmaster or a deputy public weighmaster authorized to act for a public weighmaster;
4. Furnish or give false information to a weighmaster for use in the completion of a weight certificate;
5. Present a certificate for payment falsified by the insertion of any weight, measure, or count not determined by the issuing weigh-master;
6. Use without authorization the title "licensed public weighmaster" or any similar title;
7. Represent oneself to be a public weighmaster without holding a license issued by the Division;
8. Engage in public weighing without holding a valid license as a public weighmaster, or acting under the authority of a licensed public weighmaster;
9. Use an unlicensed scale in the performance of public weighmaster duties;  
or
10. Operate a scale for public weighing unless that person is licensed as a public or deputy public weighmaster.
11. Nothing in this subsection shall be construed to prevent administrative staff of the public or deputy public weighmaster from performing administrative duties such as filing weight tickets.

B. People engaged in the business of printing weight certificate forms, their representatives, and the Division are exempt from the prohibitions specified in subsections (A)(2) and (3).

**History:**

**Ariz. Admin. Code R3-7-507 Prohibited Acts (Arizona  
Administrative Code (2022 Edition))**

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Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-602. Duties**

A. Registered service agency.

1. A registered service agency shall:

a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and

b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter, CARB test procedures, and manufacturer specifications.

2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the Division.

a. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall complete an online placed-in-service report to the Division. If an online placed-in-service report is not available for the device, a paper report shall be submitted;

b. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;

c. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;

d. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who installs or repairs the commercial device and completes the report;

e. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;

f. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and

3. A registered service agency shall have all equipment used for commercial device certification certified annually by the manufacturer. Vapor recovery test equipment shall be certified as required by the CARB test procedure or this Chapter.

4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.

5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.

6. A registered service agency shall use a form approved by the Division to record vapor recovery test results and violations. The test results shall be e-mailed to the Division within seven days after completion of the test.

7. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, at least 5 business days before an initial or annual test.

B. Registered service representative.

1. A registered service representative shall:

a. Install only commercial devices that meet the requirements of this Chapter;

b. Perform all vapor recovery tests according to this Chapter;

c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title 3, Chapter 19, this Chapter, Handbook 44, and CARB Executive Orders are met;

d. Report to the user equipment or commercial devices that do not conform to NIST standards; and

e. Complete placed-in-service reports accurately.

f. Report to the Division within 1 hour by e-mail or phone of finding a device that is not certified as part of the Certificate of Conformance under R3-7-203(A) and is installed to fraudulently obtain consumer credit card

information. Additionally, the registered service representative shall contact the local law enforcement agency for collection of the device as evidence.

2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by R3-7-910. The registered service representative shall notify the Division of the stop-sale, stop-use prior to leaving the site. The registered service representative shall notify the Division regarding retest of the site by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Division may witness the test.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-602. Duties**

A. Registered service agency.

1. A registered service agency shall:

a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and

b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter, CARB test procedures, and manufacturer specifications.

2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the Division.

a. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall complete an online placed-in-service report to the Division. If an online placed-in-service report is not available for the device, a paper report shall be submitted;

b. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;

c. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;

d. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who installs or repairs the commercial device and completes the report;

e. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;

f. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and

3. A registered service agency shall have all equipment used for commercial device certification certified annually by the manufacturer. Vapor recovery test equipment shall be certified as required by the CARB test procedure or this Chapter.

4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.

5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.

6. A registered service agency shall use a form approved by the Division to record vapor recovery test results and violations. The test results shall be e-mailed to the Division within seven days after completion of the test.

7. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, at least 5 business days before an initial or annual test.

B. Registered service representative.

1. A registered service representative shall:

a. Install only commercial devices that meet the requirements of this Chapter;

b. Perform all vapor recovery tests according to this Chapter;

c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title 3, Chapter 19, this Chapter, Handbook 44, and CARB Executive Orders are met;

d. Report to the user equipment or commercial devices that do not conform to NIST standards; and

e. Complete placed-in-service reports accurately.

f. Report to the Division within 1 hour by e-mail or phone of finding a device that is not certified as part of the Certificate of Conformance under R3-7-203(A) and is installed to fraudulently obtain consumer credit card

information. Additionally, the registered service representative shall contact the local law enforcement agency for collection of the device as evidence.

2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by R3-7-910. The registered service representative shall notify the Division of the stop-sale, stop-use prior to leaving the site. The registered service representative shall notify the Division regarding retest of the site by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Division may witness the test.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment**

- A. The Division shall not issue a license or renewal until an applicant pays all appropriate fees.
- B. Upon receipt and acceptance of all required documents, fees, and Division certification of standards, the Division shall issue the agency a license or renewal.
- C. The Division shall include on a license an assigned number, that remains effective until either withdrawn by the Division or until it expires. The Division shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.
- D. Neither a registered service agency nor a registered service representative shall transfer a license.
- E. A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.
- F. The Division may deny a license or renewal for any of the following reasons:
1. Providing false or misleading information;
  2. Failure to meet annual certification requirements for standards or testing equipment;
  3. Failure to meet the requirements stated in this Article; or
  4. For any reason that would be grounds for suspension, revocation, or refusal to renew.
- G. The Division may suspend, revoke, or refuse to renew a license if the applicant is not qualified to perform those duties required or has been found to have violated any provision of A.R.S. Title 3, Chapter 19, or this Chapter.
- H. Every registered service agency and representative shall comply with the Division's metrology laboratory annual schedule for certification of field standards contained in A.R.S. § 3-3416(F).

**History:**

**Ariz. Admin. Code R3-7-603 Grounds for Denying License or  
Renewal; Disciplinary Action; and Certification of Standards and  
Testing Equipment (Arizona Administrative Code (2022 Edition))**

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Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-604. Prohibited Acts**

A. A person shall not:

1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service agency or registered service representative license issued by the Division;
2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
3. Remove an official out-of-service, warning, or stop-sale, stop-use tag except as authorized in this Chapter, or by the Division.

B. A registered service agency or registered service representative shall not:

1. Fraudulently complete or file a placed-in-service report;
2. Delegate licensed authority or responsibility to an unlicensed person;
3. Perform a function without certified equipment;
4. Install or place in service a commercial device before satisfying all of the statutory and rule requirements;
5. Fail to report a commercial device to the Division that is found to be out of compliance under R3-7-602;
6. Install, calibrate, or repair a commercial device without placing a decal or label on the device as prescribed by the associate director;
7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from commercial use.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

## § R3-7-701. Definitions

In addition to the definitions in A.R.S. §3-3401 and R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.

"Approved oxygenate" means an oxygenate not prohibited by A.R.S. 3-3491(E).

"Area A" has the same meaning as in A.R.S. §3-3401.

"Area B" has the same meaning as in A.R.S. §3-3401.

"Area C" has the same meaning as in A.R.S. §3-3401.

"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. §3-3493(I).

"AST" means aboveground storage tank.

"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of an approved oxygenate after the blendstock is supplied from the facility at which it was produced or imported.

"Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

"Beginning of transport" means the point at which: A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

"Biodiesel" has the same meaning as prescribed under A.R.S. §3-3401.

"Biodiesel blend" has the same meaning as prescribed under A.R.S. §3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel and is not considered to be a biodiesel blend.

"Biofuel" has the same meaning as prescribed under A.R.S. §3-3401.

"Biofuel blend" has the same meaning as prescribed under A.R.S. §3-3401.

"Biofuel blender" means a person that modifies a motor fuel by adding a biofuel.

"Biofuel producer" means a person that owns, leases, operates, controls, or supervises a facility at which biofuel is produced.

"Biofuel Supplier" means a marketer or jobber of a biofuel or biofuel blend.

"Biomass" has the same meaning as prescribed under A.R.S. §3-3401.

"Biomass-based diesel" has the same meaning as prescribed under A.R.S. §3-3401.

"Biomass-based diesel blend" has the same meaning as prescribed under A.R.S. §3-3401.

"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

"CARB" means the California Air Resources Board.

"CARBOB Model" means the procedures incorporated by reference in R3-7-702(11).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in R3-7-702(8).

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

"Diesel fuel" or "Diesel" has the same meaning as prescribed under A.R.S. §3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel.

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

"EPA" means the United States Environmental Protection Agency.

"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in R3-7-702.

"Ethanol flex fuel" has the same meaning as prescribed under A.R.S. §3-3401.

"Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person.

"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

"Fuel ethanol" means denatured ethanol that meets the requirements in ASTM D4806, which is incorporated by reference in R3-7-702.

"Gasoline" has the same meaning as prescribed under A.R.S. §3-3401.

"Isobutanol" means butanol isomer 2-methyl-1-propanol that meets the requirements in ASTM D7862, which is incorporated by reference in R3-7-702.

"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

"Manufacturer's proving ground" has the same meaning as prescribed under A.R.S. §3-3401.

"Marketer" means a person engaged in selling or offering for sale motor fuels.

"Motor Fuel" has the same meaning as prescribed under A.R.S. §3-3401.

"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in R3-7-751(A)(1) through (7), R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:

A vehicle that runs on or is guided by rails, or

A vehicle designed primarily for travel through air or water.

"Motor vehicle racing event" has the same meaning as prescribed under A.R.S. §3-3401.

"MTBE" means methyl tertiary butyl ether.

"Neat" means pure or 100 percent.

"NOx" means oxides of nitrogen.

"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.

"Oxygenate" has the same meaning as prescribed under A.R.S. §3-3401.

"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.

"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

"Premium Diesel" means a diesel fuel meeting the requirements in ASTM D975 and in Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the associate director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

"Product transfer document" has the same meaning as prescribed under A.R.S. §3-3401.

"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a trans-mix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not necessarily ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter or another terminal.

"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

"Transferee" means a person that receives title to or custody of a motor fuel.

"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

"UST" means underground storage tank.

"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.

"Vehicle emissions control area" has the same meaning as prescribed under A.R.S. §3-3401.

"VOC" means volatile organic compound.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.

**§ R3-7-702. Material Incorporated by Reference**

A. The following documents are incorporated by reference and on file with the Division. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 14, 2016 Edition, Government Publishing Office, 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or [bookstore.gpo.gov](http://bookstore.gpo.gov).
2. API Recommended Practice 1637 (API RP 1637), "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals," published July 2006, Reaffirmed May 2012, American Petroleum Institute (API), 6300 Interfirst Drive, Ann Arbor, MI, 48108.
3. ASTM Standard D975, 2016a (ASTM D975-16a), "Standard Specification for Diesel Fuel Oils," published 2016, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org).
4. ASTM Standard D4806, 2016a (ASTM D4806-16a), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published 2016, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org).
5. ASTM Standard D4814, 2016ee1 (ASTM D4814-16ee1), "Standard Specification for Automotive Spark-Ignition Engine Fuel," published 2016, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org).
6. Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.
7. ASTM Standard D5798, 2015 (ASTM D5798-15), "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines," published 2015, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org).
8. ASTM Standard D6751, 2015ce1 (ASTM D6751-15ce1), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published 2015, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org).

9. ASTM Standard D7862, 2017 (ASTM D7862-17), "Standard Specification for Butanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel," published 2017, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org) .

10. California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or [www.arb.ca.gov](http://www.arb.ca.gov) .

11. The Federal Complex Model contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government Publishing Office, 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or [bookstore.gpo.gov](http://bookstore.gpo.gov).

12. California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or [www.arb.ca.gov](http://www.arb.ca.gov) .

13. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or [www.arb.ca.gov](http://www.arb.ca.gov) .

14. ASTM Standard D7467, 2015ce1 (ASTM D7467-15ce1), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published 2015, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org) .

15. SAE International, SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines," published May 5, 2012, SAE International, 400 Commonwealth Drive, Warrendale, PA 15096-0001 or [www.sae.org](http://www.sae.org) .

B. Subsection (A)(11) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

### **History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.



**§ R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel  
Dispensers**

A. After completing an inspection, the Division shall return all motor fuel to the owner or operator of a motor fuel dispensing site at the site where the Division collected the motor fuel.

B. After completing an inspection, if a motor fuel cannot be returned to the owner or operator of a motor fuel dispensing site at the site where the Division collected the motor fuel, the Division shall transport the motor fuel to another site of the owner or operator's choice and within a 20-mile radius of the inspection site.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-704. Motor Fuel Dispensing Site Price and Grade Posting  
on External Signs**

A. A person who owns or operates a motor fuel dispensing site that has an external sign shall ensure that the sign:

1. Identifies whether the price differs depending on whether the payment is cash, credit, or debit;
2. Identifies the self-service and full-service prices, if different;
3. Discloses the full price of motor fuel including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;
4. Displays lettering at a height of at least  $1/5$  of the letter height of the motor fuel price displayed on the external sign or  $2\ 1/2$ ", whichever is larger, and is visible from the road;
5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection (A)(4);
6. Describes the motor fuel that meets ASTM D975 as No. 1 Diesel, #1 Diesel, No. 2 Diesel, #2 Diesel, or premium diesel. Describes other fuel for use in compression ignition engines as biodiesel, or biodiesel blend. Diesel fuel No. 2 may be labeled on dispensers as diesel fuel without indication of the fuel grade;
7. Describes motor fuel with an ethanol concentration of 51 to 83 volume percent as ethanol flex fuel;
8. Identifies the unit of measure of the price, if it is other than per gallon; and
9. Sites that sell Ethanol Flex Fuel previously labeled as "E-85" shall update the signage to reflect the sale of Ethanol Flex Fuel no later than January 1, 2018. In no case shall signage with an incorrect ethanol content be advertised at the motor fuel dispensing site.

B. For the following terms used on a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index as determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method:

**Ariz. Admin. Code R3-7-704 Motor Fuel Dispensing Site Price and  
Grade Posting on External Signs (Arizona Administrative Code  
(2022 Edition))**

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Term	Minimum Antiknock Index
1. Regular, Reg, Unleaded, UNL, or UL	87
2. Midgrade, Mid, or Plus	89
3. Premium, PREM, Super, Supreme, High, or High Performance	91

C. A person may use an alternative to the descriptions provided in subsection (B) upon receipt of written approval by the associate director.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

### **§ R3-7-705. Dispenser Labeling at Motor Fuel Dispensing Sites**

The owner or operator of a motor fuel dispensing site shall label dispensers in accordance with the following provisions:

A. Pricing, motor fuel grade, octane rating, and lead substitute. A motor fuel dispensing station owner or operator shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead-substitute addition displayed on a motor fuel dispenser:

1. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
2. Displays the highest price of motor fuel sold from the dispenser prior to any deliberate action of the customer resulting in a discounted price being displayed, provided the dispenser is capable of dispensing and computing the price of motor fuel at more than one price;
3. Complies with the requirements of R3-7-704(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), (A)(7), (A)(8), (A)(9) and (B).
4. Displays the octane rating of each grade of gasoline;
5. Displays the signs required by Handbook 130 for motor fuel dispensers that dispense gasoline with lead substitute, in letters at least 1/4" in height; and
6. Sites that sell ethanol flex fuel previously labeled as "E-85" shall update the signage to reflect the sale of ethanol flex fuel no later than January 1, 2018. In no case shall signage with an incorrect ethanol content be advertised at the motor fuel dispensing site.

B. All motor fuels shall meet the labeling requirements of 16 CFR 306. Additionally, the following requirements apply:

1. Gasoline containing fuel ethanol.
  - a. Gasoline containing greater than 1.5 percent by weight oxygen or 4.3 percent by volume fuel ethanol shall be labeled with the following statement to indicate the maximum percent by volume of fuel ethanol contained in the gasoline: "May contain up to \_\_\_\_\_ % fuel ethanol."
  - b. Within the CBG-covered area and area B, gasoline containing fuel ethanol shall be labeled with the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles."

c. Gasoline for sale outside of the CBG-covered area with an ethanol content greater than 10 volume percent and less than or equal to 15 volume percent shall additionally be labeled in accordance with 40 CFR 80.1501, as it existed on July 18, 2014, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.

2. Gasoline containing an oxygenate other than fuel ethanol. Gasoline containing greater than 1.5 percent by weight shall be labeled with the following statement to indicate the type and maximum percent by volume of oxygenate contained in the gasoline: "May contain up to \_\_\_\_\_ % \_\_\_\_\_."

3. The labels in subsection B(1) and (B)(2) shall be printed in black and white block letters on a sharply contrasting background with lettering no smaller than ¼ inch. The statements in subsection (B)(1)(i) and (B)(1)(ii) may be printed on the same label or on separate labels if the statements are displayed next to each other.

4. Non-oxygenated gasoline. It is prohibited to label a dispenser as containing no oxygenate if the gasoline contains more than 0.5 percent by volume of any oxygenates.

5. Biodiesel blends. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified.

C. Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.

D. All dispensers shall have a decal that contains the Division's name and phone number. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. §3-3414(A)(13) satisfies this requirement.

E. All labels required under this section shall be in the upper 50 percent of the front panel of each motor fuel dispenser and shall be clean, legible, and visible at all times.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB**

A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:

1. The grade of the motor fuel;
2. The volume of each grade of motor fuel being transferred;
3. The date of the transfer;
4. Product transfer document number;
5. For conventional gasoline, the minimum octane rating of each grade as prescribed by 16 CFR 306;
6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;
7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
8. If a lead substitute is present in the gasoline, the type of lead substitute present;
9. For the following biofuel or biofuel blends;
  - a. Ethanol Flex Fuel shall contain a declaration of the volume percent of ethanol in the blend; or
  - b. Biodiesel and biomass-based diesel blends containing more than 5 percent biodiesel or biomass-based diesel shall contain a declaration of the volume percent biodiesel or biomass-based diesel in the blend, as well as the grade of diesel in the blend; and
  - c. All other biofuel or biofuel blends shall contain the percentage of biofuel in the finished product.
10. The final destination:
  - a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address and the transporter name and address;

**Ariz. Admin. Code R3-7-707 Product Transfer Documentation and  
Record Retention for Motor Fuel other than Arizona CBG and  
AZRBOB (Arizona Administrative Code (2022 Edition))**

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b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and

c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(10)(b) and (A)(10)(c), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.

D. A person identified in subsection (A) shall retain product transfer documentation for each shipment delivered for 12 months. This documentation shall be available within two working days from the time of the Division's request.

E. A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.

F. An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the premises of the motor fuel dispensing site owner or operator or fleet owner. This documentation shall be available for Division review.

G. The Division shall accept a legible photocopy of a product transfer document instead of the original.

H. A person transferring custody or title of Arizona CBG or AZRBOB shall comply with R3-7-757.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-708. Gasoline Oxygenate Blends**

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. §3-3491.

B. Special provisions for gasoline ethanol blends.

1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:

a. The concentration of the ethanol, excluding the required denaturing agent, shall be:

i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and

ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and

b. The ethanol content of the gasoline ethanol blend shall:

i. Be determined using the appropriate test method listed in ASTM D4814, and

ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.

2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:

a. Outside the CBG-covered area year around, and

b. Within the CBG-covered area during April.

3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:

a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:

i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and

ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;

b. The finished blend complies with the standards in ASTM D4814; or

c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:

i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and

ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived.

4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in R3-7-707, the transferor of an oxygenated gasoline blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains an oxygenate and lists the type and percentage concentration of the oxygenate.

D. Nothing in this subsection shall preclude the sale of gasoline with an ethanol content greater than 10 percent by volume and less than or equal to 15 percent by volume of ethanol outside of the CBG-covered area.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.

**§ R3-7-710. Blending Requirements**

A. A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs at a motor fuel dispensing site or fleet vehicle fueling facility.

B. If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§3-3491, 3-3492, 3-3495, or R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:

1. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ 3-3491, 3-3492, 3-3495, or R3-7-751;
2. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend;
3. Upon written permission of the associate director, add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-712. Water in Motor Fuel Dispensing Site Storage Tanks**

A motor fuel dispensing site owner or operator shall ensure that water in a motor fuel storage tank other than an alcohol gasoline blend, does not exceed 1" in depth when measured from the bottom through the fill pipe. The owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-713. Motor Fuel Storage Tank Labeling**

A. An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at the motor fuel dispensing site are labeled to identify the contents accurately as:

1. Unleaded gasoline,
2. Unleaded midgrade gasoline,
3. Unleaded premium gasoline,
4. No. 1 or #1 diesel fuel,
5. No. 2, #2 diesel fuel, or diesel fuel,
6. Premium diesel,
7. Gasoline vapor return,
8. Biodiesel or biodiesel blend, for blends containing more than 5 percent by volume,
9. E85 or Ethanol flex fuel, or
10. Other fuel as designated on the product transfer document.

B. An owner or operator of a motor fuel dispensing site shall ensure that the label required under subsection (A) is at least 1 1/2" x 5" with at least 1/4" black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times.

C. An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.

D. An owner or operator of a motor fuel dispensing site shall not put motor fuel into storage tanks without attaching the proper label.

E. A person shall not deliver motor fuel to a motor fuel dispensing site unless the product transfer documents confirm the motor fuel is the correct type as indicated on the tank fill pipes labeled under subsection (A) or the product being delivered meets or exceeds the standards.

F. If tank manhole covers are color-coded, the color coding shall comply with API 1637.

**Ariz. Admin. Code R3-7-713 Motor Fuel Storage Tank Labeling  
(Arizona Administrative Code (2022 Edition))**

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**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-715. Motor Fuel Testing Methods and Requirements**

A. Unless otherwise required in A.R.S. Title 3, Chapter 19, or this Chapter, the producer of a motor fuel shall test and certify the motor fuel for its motor fuel properties using the methodologies in R3-7-702.

B. The octane rating shall be determined and certified in accordance with 16 CFR 306 using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-716. Sampling and Access to Records**

A. The Division shall obtain motor fuel samples for testing from:

1. The same motor fuel dispenser used for sales to customers;
2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;
3. A bulk storage facility;
4. A pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;
5. A transporter of motor fuel, including Arizona CBG or AZRBOB;
6. A final distribution facility;
7. A third-party terminal having custody of motor fuel, including Arizona CBG or AZRBOB;
8. An oxygenate blender or registered supplier; or
9. A transmix or production facility.

B. An owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain for five years records relating to producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels, including Arizona CBG or AZRBOB, and shall make the records available for Division inspection upon request.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-717. Motor Fuel Dispensing Site Equipment**

A. Hold-open latch. If an owner or operator of a motor fuel dispensing site has a dispensing device with a motor fuel nozzle equipped with a hold-open latch, the owner or operator shall ensure that the latch operates according to the manufacturer's specifications.

B. Nozzle requirements for diesel fuel. An owner or operator of a motor fuel dispensing site with a dispensing device from which diesel fuel is sold at retail shall ensure that the dispensing device has a nozzle spout with a diameter that conforms to SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines."

C. Motor fuel dispenser filters. An owner or operator of a motor fuel dispensing site shall ensure that:

1. All gasoline, gasoline-alcohol blends, and ethanol flex fuel dispensers have a 10 micron or smaller nominal pore-sized filter;
2. Dispensers that dispense gasoline-alcohol blends shall have fuel filters designed for use with gasoline-alcohol blends;
3. All biodiesel, biodiesel blends, diesel, and kerosene dispensers have a 30 micron or smaller nominal pore-sized filter; or
4. In the event a fuel dispenser is not manufactured to be equipped to use fuel filters, they shall be installed in line with the fuel dispensing hose at the base of the dispenser. If this is not feasible, the motor fuel dispensing site owner may provide evidence that fuel filters cannot be installed at the site due to the configuration and apply for a waiver from these requirements from the Associate Director.

D. From and after September 30, 2018, all retail diesel fuel dispensers shall be equipped with nozzles that have a green grip guard and ethanol flex fuel dispensers shall be equipped with nozzles that have a yellow grip guard. No other nozzles shall be equipment with these color grip guards.

E. Motor fuel dispensers shall meet appropriate UL ratings and be compatible with the motor fuel being dispensed.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-718. Additional Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends**

A. Registration and reporting requirements for biofuel blenders, biofuel producers, and biofuel suppliers of biofuel or biofuel blends in Arizona.

1. Registration requirement.

a. A biofuel producer, biofuel supplier, or biofuel blender shall register with the associate director, using a form prescribed by the associate director, before producing or supplying biofuel or biofuel blend in Arizona.

b. A person required to register under subsection (A)(1)(a) shall notify the associate director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).

c. If a biofuel producer, biofuel supplier, or biofuel blender fails to register under subsection (A)(1)(a), the associate director shall take action as allowed under A.R.S. § 3-3475 and R3-7-762.

d. The Division shall maintain and make available to the public a list of all persons registered under this Section.

2. Reporting requirement.

a. A person required to register under subsection (A)(1)(a) shall report to the Division by January 30th of each year for the previous calendar year. The person shall:

i. Report on a form or in a format prescribed by the associate director;

ii. Provide the total amount of biofuel or biofuel blend produced or supplied for the previous calendar year, including the total amount of each blend component;

iii. Attest to the truthfulness and accuracy of the information submitted;

iv. Ensure that the report form is signed or submitted electronically by a corporate officer, or the officer's designee, responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.

b. The Division shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. §44-1374 if the person that submits the information expressly designates the information as confidential.

**Ariz. Admin. Code R3-7-718 Additional Requirements for  
Production, Transport, Distribution, and Sale of Biofuels and  
Biofuel Blends (Arizona Administrative Code (2022 Edition))**

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**B. Quality Assurance and Quality Control (QA/QC) program requirements.**

1. A biofuel producer or biofuel blender shall implement a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona;

2. The QA/QC program implemented by a biofuel producer shall include the following minimum requirements:

a. A sampling and testing program to certify that the biofuel meets applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods. The plan shall include a policy for sample retention;

b. A Certificate of Analysis with a unique identification number generated for each batch produced and indicated on the product transfer document;

c. The Certificate of Analysis required under subsection (B)(2)(b) and any other supporting sampling and testing documentation required under this Section is made available to the Division within 24 hours of a request; and

d. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards.

3. The QA/QC program implemented by a biofuel blender shall include the following minimum requirements:

a. Retention of:

i. Documentation that demonstrates the applicable biofuel blend components were received from a facility registered with the EPA under 40 CFR 80, subpart K or M;

ii. Certificates of Analysis for the biofuel used as a blend component in the blending process; and

iii. Documentation such as a product transfer document that demonstrates the diesel fuel used in the blending process meets the requirements of ASTM D975;

b. For biodiesel blending, all diesel fuel used as a blend component is analyzed to verify the biodiesel content before blending if the initial volume percent of biodiesel content in the diesel fuel component is unknown; alternatively, for biodiesel blends blended at a motor fuel dispensing site, the biofuel blender may assume the diesel contains 5% biodiesel and prepare and maintain calculations demonstrating the biodiesel content of the final

**Ariz. Admin. Code R3-7-718 Additional Requirements for  
Production, Transport, Distribution, and Sale of Biofuels and  
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biodiesel blend if it is advertised to consumers as a B6 to B20 biodiesel blend and the calculations demonstrate the biodiesel blend will be compliant with the biodiesel content advertised;

c. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and

d. All biodiesel used as a blend component in biodiesel blends consists of at least 99 percent biodiesel unless approved by the Division.

4. All records required under this subsection are maintained either onsite or at an offsite location for at least five years and made available to the Division upon request.

5. In the event the Division identifies biofuel or biofuel blends that do not meet ASTM requirements, the producer or biofuel blender shall evaluate the QA/QC program and make any additional changes that may be required to bring the fuel into compliance.

C. Ethanol flex fuel sold or offered for sale within the CBG-covered area shall:

1. Use fuel ethanol that meets the standards in this Chapter, and

2. Have a maximum vapor pressure that does not exceed the maximum vapor pressure requirements in R3-7-751(A)(6).

D. Requirements for motor fuel dispensing sites. The owner or operator of a motor fuel dispensing site at which ethanol flex fuel is dispensed shall ensure that any ethanol flex fuel, biodiesel or biodiesel blend sold, offered or exposed for sale, or dispensed was received from and traceable to a person registered with the Division under subsection (A)(1) and the Environmental Protection Agency under 40 CFR 80, subparts K or M.

E. Exemptions.

1. A biofuel producer, biofuel supplier, or biofuel blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or biofuel blender located within Arizona is not required to register under subsection (A)(1)(a);

2. Diesel fuel containing five percent by volume or less biodiesel is exempt from this Section if the following conditions are met:

a. The diesel fuel meets the standards of ASTM D975; and

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Production, Transport, Distribution, and Sale of Biofuels and  
Biofuel Blends (Arizona Administrative Code (2022 Edition))**

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- b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975.
3. A biofuel producer, biofuel supplier, or biofuel blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section.
4. Gasoline containing up to 10 percent ethanol is exempt from this section.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-750. Registration Relating to Arizona CBG or AZRBOB**

A. Each of the following shall register with the associate director before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:

1. A refiner that produces Arizona CBG or AZRBOB;
2. An importer that imports Arizona CBG or AZRBOB;
3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the associate director and include the following information:

1. Business name, business address, and contact name or position title and telephone number;
2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
3. For each refinery, oxygenate blending facility, or importer:
  - a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and
  - b. If an independent laboratory is used to meet the requirements of R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of consent permitting the Division or its authorized agent to collect samples and access records as provided in R3-7-716.

C. A person registered under subsection (B) shall notify the associate director within 10 days after the effective date of a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered

area is presumed to be noncompliant from the date that registration should have occurred.

E. The Division shall maintain a list of all registered suppliers.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-750. Registration Relating to Arizona CBG or AZRBOB**

A. Each of the following shall register with the associate director before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:

1. A refiner that produces Arizona CBG or AZRBOB;
2. An importer that imports Arizona CBG or AZRBOB;
3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the associate director and include the following information:

1. Business name, business address, and contact name or position title and telephone number;
2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
3. For each refinery, oxygenate blending facility, or importer:
  - a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and
  - b. If an independent laboratory is used to meet the requirements of R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of consent permitting the Division or its authorized agent to collect samples and access records as provided in R3-7-716.

C. A person registered under subsection (B) shall notify the associate director within 10 days after the effective date of a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered

area is presumed to be noncompliant from the date that registration should have occurred.

E. The Division shall maintain a list of all registered suppliers.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-751. Arizona CBG Requirements**

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this subsection are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.

1. Sulfur: 95 ppm by weight (max).
2. Aromatics: 50 percent by volume (max).
3. Olefins: 25 percent by volume (max).
4. E200: 70-30 percent volume.
5. E300: 100-70 percent volume.
6. Maximum vapor pressure:
  - a. October: 9.0 psi.
  - b. November 1 - March 31: 9.0 psi.
  - c. April: 10.0 psi.
  - d. May: 9.0 psi.
  - e. June 1 - September 30: 7.0 psi.
  - f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in R3-7-708(B), during April only.
7. Oxygen and oxygenates:
  - a. Minimum content:
    - i. November 1 - March 31: 10 percent fuel ethanol by volume or 12.5 percent isobutanol by volume. If A.R.S. §3-3493(C) petition in effect: 2.7 percent oxygen by weight as approved by the associate director.
    - ii. April 1 - October 31: 0 percent by weight (any oxygenate).
  - b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and shall not exceed the amount allowed by EPA waivers under Section 211(f) of the Clean Air Act for other oxygenates. Additionally, the

oxygen content shall comply with the requirements of A.R.S. §3-3491 and §3-3492.

c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. §3-3491.

8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 requirements.

B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.

1. Sulfur: 80 ppm by weight (max),

2. Aromatics: 30% by volume (max),

3. Olefins: 10% by volume (max),

4. 90% Distillation Temp. (T90): 330° F (max),

5. 50% Distillation Temp. (T50): 220° F (max),

6. Vapor Pressure: 9.0 psi (max), and

7. Oxygenate ;

a. Minimum oxygenate content - 10 percent fuel ethanol by volume or 12.5 percent isobutanol by volume;

b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. §3-3492; and

c. Alternative minimum fuel ethanol or isobutanol content may be used if approved by the associate director under A.R.S. §3-3493(C).

C. Fuel ethanol and other oxygenate specifications. A person that uses fuel ethanol or other oxygenates as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol or other oxygenates meet the following requirements :

1. A sulfur content not exceeding 10 ppm by weight;

2. The fuel ethanol or other oxygenate must be composed solely of carbon, hydrogen, nitrogen, oxygen, and sulfur;
3. For fuel ethanol, only gasoline previously certified under 40 CFR Part 80 (including previously certified blendstocks for oxygenate blending), gasoline blendstocks, or natural gas liquids may be used as denaturants; and
4. For fuel ethanol, the concentration of all denaturants is limited to a maximum of 3.0 volume percent.

D. General elections. Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director on a form or in a format prescribed by the associate director. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and
2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with R3-7-760. A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.

E. Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director on a form or in a format prescribed by the associate director. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies

with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements; and

2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.

F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.

G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the Division approves using the criteria stated in R3-7-759.

H. Certification and use of Predictive Model for alternative PM gasoline formulations.

1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.

2. A registered supplier shall certify a PM alternative gasoline formulation with the associate director by either:

a. Submitting to the associate director a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J); or

b. Notifying the associate director, on a form prescribed by or in a format acceptable to the associate director, of:

i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and

- ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
- 3. A registered supplier shall deliver the certification required under subsection (H)(2) to the associate director before transporting the PM alternative gasoline formulation.
- 4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
  - a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.
  - b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
    - i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;
    - ii. There are no changes to the PM alternative specifications for remaining fuel properties; and
    - iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.
  - c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).
  - d. If a registered supplier notifies the associate director under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all

final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:

- i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or
- ii. Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.

I. Prohibited activities regarding PM alternative gasoline formulations. A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under R3-7-752 if any of the following occur:

1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures,
2. The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or
4. With respect to any fuel property for which the registered supplier elects a PM averaging limit:
  - a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2); or
  - b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).

J. Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A

registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

K. Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:

1. A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;
2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 through September 15 during that same period; and
3. A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 through September 15 during that same period.

L. Consequence of failure to comply with averages.

1. In addition to a penalty under R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:
  - a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;
  - b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the associate director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director in writing of the

beginning date of the probationary period. The probationary period ends 90 days after its beginning date.

2. A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:

a. The registered supplier submits a compliance plan to the associate director that includes:

- i. An implementation schedule for actions to correct noncompliance, and
- ii. Reporting requirements that document implementation of the compliance plan,

b. The associate director approves the plan,

c. The registered supplier implements the plan, and

d. The registered supplier achieves compliance.

3. If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.

a. If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.

b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the associate director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director in writing of the beginning date of the probationary period.

4. If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

M. Effect of VOC survey failure. Each time a VOC survey conducted under R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be

increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.

N. Effect of NO<sub>x</sub> survey failure. Each time a NO<sub>x</sub> survey conducted under R3-7-760 shows excess NO<sub>x</sub> emissions in the CBG-covered area, the NO<sub>x</sub> average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.

O. Subsequent survey compliance. If the minimum VOC or average NO<sub>x</sub> emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NO<sub>x</sub> for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NO<sub>x</sub> emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:

1. >27 percent for the VOC emissions reduction percentage, May 1 - through September 15, Table 1, column C; and
2. >6.8 percent for the NO<sub>x</sub> emissions reduction percentage, May 1 - through September 15, Table 1, column B.

P. Subsequent survey failures. If a VOC or NO<sub>x</sub> emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NO<sub>x</sub> survey shows excess VOC or NO<sub>x</sub> emissions in the CBG-covered area:

1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in R3-7-751(A)(8) and the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;
2. For a NO<sub>x</sub> survey failure, the NO<sub>x</sub> average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and
3. If the VOC or NO<sub>x</sub> emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NO<sub>x</sub> emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NO<sub>x</sub> emissions.

Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.

R. The use of oxygenates other than ethanol under subsection (A)(7)(a)(i) and (B)(7)(a) is prohibited until EPA approves a revision to the state implementation plan allowing the use of oxygenates other than ethanol.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.

**§ R3-7-752. General Requirements for Registered Suppliers**

A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.

B. A registered supplier shall make the certification on a form or in a format prescribed by the associate director. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under R3-7-759, and performance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the associate director on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.

C. Recordkeeping and records retention.

1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:

a. Sample date;

b. Identity of blend or product sampled;

c. Container or other vessel sampled;

d. The final blend or shipment volume; and

e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under R3-7-759.

2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the associate director shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in R3-7-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the associate director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.

3. A registered supplier shall provide to the associate director any records maintained by the registered supplier under this Section within 20 days of a written request from the associate director. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the

associate director shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of R3-7-751, unless the registered supplier demonstrates to the associate director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.

D. Notification requirement. A registered supplier shall notify the associate director by fax or e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

E. Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the associate director for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with R3-7-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the associate director for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director shall determine whether the changed QA/QC program meets the original quality objectives. The associate director shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).

F. Independent testing.

1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:

a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.

b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:

i. An independent laboratory shall collect a representative sample from each batch;

ii. The associate director or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and

iii. The independent laboratory shall, for each sample identified by the associate director or designee, analyze the sample using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.

2. The associate director or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the associate director or designee. The registered supplier shall submit a duplicate of the sample to the associate director within 24 hours of the written request.

3. Designation of independent laboratory.

a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).

b. A registered supplier shall identify the designated independent laboratory to the associate director under the registration requirements of R3-7-750.

c. A laboratory is considered independent if:

i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,

ii. The laboratory does not have any interest in any registered supplier, and

iii. The registered supplier does not have any interest in the designated laboratory.

d. Notwithstanding the restrictions in subsection (F)(3)(c), the associate director shall consider a laboratory independent if it is owned or operated by a pipeline owned or operated by four or more registered suppliers.

e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment,

Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4.

4. A registered supplier shall ensure that its designated independent laboratory:

a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:

i. The producer's or importer's assigned batch number for the batch sampled;

ii. The volume of the batch;

iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;

iv. The date and time the batch became Arizona CBG or AZRBOB;

v. The date and time the sample is collected;

vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);

b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the associate director for up to 180 days;

c. Submits to the associate director a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):

i. The results of the independent laboratory's analyses for each fuel property, and

ii. The information specified in subsection (F)(4)(a) for each sample; and

d. Supplies to the associate director, upon request, a duplicate of the sample.

G. Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under 40 CFR 80.65(f)(iv), is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled

in-line blending operation, which are submitted to EPA under 40 CFR 80.65(f)(iv), are submitted to the associate director by March 1 of each year.

H. Use of laboratory analysis for certification of Arizona CBG and AZRBOB.

1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:

a. Sulfur content: 25 ppm by weight,

b. Aromatics: 2.7% by volume,

c. Olefins: 2.5% by volume,

d. Fuel ethanol: 0.4% by volume,

e. Isobutanol: 0.6% by volume

f. Vapor pressure: 0.3 psi,

g. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,

h. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,

i. E200: 2.5% by volume,

j. E300: 3.5% by volume, or

k. API gravity: 0.3° API.

2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):

a. The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or

b. Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel property. If the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.  
Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.

**§ R3-7-753. General Requirements for Pipelines and Third-party Terminals**

A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:

1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the Division under R3-7-750; and
2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.

B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the associate director.

C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each registered supplier each day at each input location.

D. A pipeline shall provide the associate director with a report summarizing the quality control testing results obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.

E. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the associate director by fax or e-mail within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.

F. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the associate director by fax or e-mail within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release

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of the batch from a distribution point until the batch is certified as meeting the standards in R3-7-751(A) or (B), as applicable.

G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the associate director for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the associate director for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director shall determine whether the changed QA/QC program meets the quality objectives originally approved by the Division. The associate director shall approve the changed QA/QC program if it meets the quality objectives.

H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in R3-7-752 and oxygenate blenders in R3-7-755, as applicable.

I. A pipeline is not liable under R3-7-761 if it follows all of the procedures in this Section.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-754. Downstream Blending Exceptions for Transmix**

A. A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of one percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.

B. One of two methods shall be used to measure the transmix as it is blended into the product stream:

1. Meters, calibrated at least twice each year; or

2. Tank gauge as per American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the Division. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070. This incorporation by reference contains no future editions or amendments.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-755. Additional Requirements for AZRBOB and  
Downstream Oxygenate Blending**

A. Application of Arizona CBG standards to AZRBOB.

1. Determining whether AZRBOB complies with Arizona CBG standards.

a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified type and amount of oxygenate to a representative sample of the AZRBOB and determining the fuel properties and performance standards of the resulting gasoline using the test methods in R3-7-759 or, in the case of fuel ethanol blends, certifying the AZRBOB using the CARBOB model. If the registered supplier designates a range of amounts of oxygenate to be added to the AZRBOB, the minimum designated amount of oxygenate shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Division shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding oxygenate to the AZRBOB.

b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the oxygenate added to the representative sample under subsection (A)(1)(a) is representative of the oxygenate the registered supplier reasonably expects will be subsequently added to the AZRBOB.

2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under R3-7-751 by adding the minimum amount of oxygenate designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Division shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of oxygenate to the AZRBOB.

B. Restrictions on transferring AZRBOB.

1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:

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a. The transferee is a registered oxygenate blender and will add oxygenate in the type and amount (or within the range of amounts) designated in R3-7-757 before the AZRBOB is transferred from a final distribution facility, or

b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the type and amount (or within the range of amounts) of oxygenate designated in R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.

2. A person shall not sell or supply Arizona CBG from a final distribution facility if the type and amount or range of amounts of oxygenate designated in R3-7-757 have not been added to the AZRBOB.

C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:

1. Oxygenate in the type and amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or

2. Other AZRBOB for which the same oxygenate type and amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.

3. A registered oxygenate blender may utilize an oxygenate type other than the one specified by the registered supplier provided all the requirements of R3-7-751, R3-7-752, R3-7-755, and R3-7-759 are demonstrated with the addition of the different oxygenate type.

D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or [bookstore.gpo.gov](http://bookstore.gpo.gov). The material incorporated includes no future editions or amendments.

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1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";
2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in R3-7-759...;" and
3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(e)(2)(i))" is changed to read "(within the ranges of the applicable test methods).

E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:

1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
  - a. The third party shall not be an employee of a registered supplier,
  - b. The third party shall not have an obligation to or interest in any registered supplier, and
  - c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the associate director under subsection (G);
3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in R3-7-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;
6. Participates in a correlation program with the associate director to ensure the validity of analysis results;

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7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
  8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the associate director, within 30 days after submitting the report required under subsection (E)(10);
  9. Permits a Division official to monitor sample collection, transportation, storage, and analysis at any time; and
  10. Prepares and submits a report to the associate director within 30 days after the sampling is completed that includes the following information:
    - a. Name of the person collecting the samples;
    - b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the associate director under subsection (G) and the results are accurate;
    - c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
    - d. Identification of the area from which the samples were collected;
    - e. Address of each motor fuel dispensing site from which a sample was collected;
    - f. Dates on which the samples were collected;
    - g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NO<sub>x</sub> emissions reduction percentage, as applicable;
    - h. Name and address of each laboratory at which the samples were analyzed;
    - i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
    - j. Number of samples collected at each motor fuel dispensing site; and
    - k. Justification for excluding a collected sample if one was excluded.
- F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall

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begin the sampling on the date selected by the associate director. The associate director shall inform the third party of the date selected at least 10 business days before sampling is to begin.

G. To obtain the associate director's approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:

1. Submit the plan to the associate director no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and
2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the associate director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

I. Requirements for oxygenate blenders.

1. Requirement to add oxygenate to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that oxygenate will be added to the AZRBOB, the oxygenate blender shall add oxygenate to the AZRBOB in the type and amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.

2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending oxygenate with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R3-7-759.

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3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.

a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB;"

b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in R3-7-759...;" and

c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."

4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.

a. An oxygenate blender that produces Arizona CBG by blending oxygenate with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:

i. Obtain a flow proportional composite sample after the addition of oxygenate and before combining the resulting Arizona CBG with any other Arizona CBG;

ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in R3-7-759; and

iii. Determine the volume of the resulting Arizona CBG.

b. If the test results for the Arizona CBG indicate that it does not contain the amount of oxygenate specified by the ranges of the applicable test methods, the oxygenate blender shall:

i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;

ii. Begin an investigation to determine the cause of the noncompliance;

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iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and oxygenate, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and

iv. Notify the associate director in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.

c. The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the associate director determines that the corrective action has remedied the noncompliance.

5. Recordkeeping and records retention.

a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:

i. Sample date,

ii. Identity of blend or product sampled,

iii. Container or other vessel sampled,

iv. Volume of final blend or shipment,

v. Oxygen content as determined under R3-7-759, and

vi. Results from all testing.

b. The associate director shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director that the Arizona CBG meets the standards in R3-7-751.

c. Within 20 days of the associate director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the associate director shall deem that the blend or shipment of Arizona CBG violates R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director that the Arizona CBG meets the standards and limits under R3-7-751.

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6. Notification requirement. An oxygenate blender shall notify the associate director by fax or e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

7. Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the associate director for approval at least three months before transporting Arizona CBG. The associate director shall approve a QA/QC program only if the associate director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).

8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).

9. Within 24 hours of the associate director's or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.

**§ R3-7-756. Downstream Blending of Arizona CBG with  
Nonoxygenate Blendstocks**

A. A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person demonstrates to the associate director:

1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;
2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
3. The resulting fuel blend is not used within the CBG-covered area.

B. Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in R3-7-751(A) or (B) if the person obtains prior written approval from the associate director based on a demonstration that adding the blend-stock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the Division.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-757. Product Transfer Documentation; Records Retention**

A. If a person transfers custody or title to Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:

1. Volume of Arizona CBG or AZRBOB being transferred;
2. Location of the Arizona CBG or AZRBOB at the time of transfer;
3. Date of the transfer;
4. Product transfer document number;
5. Identification of the gasoline as Arizona CBG or AZRBOB;
6. Minimum octane rating of the Arizona CBG or AZRBOB;
7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through March 31, the type and minimum quantity of oxygenate contained in the Arizona CBG;
8. If the product transferred is AZRBOB for which oxygenate blending is intended:
  - a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of oxygenate";
  - b. Oxygenate type or types and amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent of oxygenate and weight percent oxygen content; and
  - c. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for oxygenate type or types and amount or range of amounts; and
9. The final destination:
  - a. When a terminal is the transferor, the owner or the operator of the product transfer document the terminal name and address and the transporter name and address;

b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and

c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual includes all required information for the Arizona CBG or AZRBOB.

D. Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, motor fuel dispensing site, or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24 months before the most recent transfer. The transferee shall maintain product transfer documents for the 30 days before the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 24 months elsewhere.

E. A motor fuel dispensing site or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG transferred during the 12 months before the most recent transfer. The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent transfers on the premises. The motor fuel dispensing site or fleet vehicle fueling facility may maintain the remaining product transfer documents for the preceding 12 months elsewhere.

F. A registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 60 months before the most recent transfer. The transferee shall maintain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer at the business address listed on the

product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.

G. When a person transfers custody or title of an oxygenate that is intended for use in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the oxygenate complies with the standards for an oxygenate intended for use in AZRBOB or Arizona CBG.

H. Upon request by the associate director or designee, a person shall present product transfer documents to the Division within two working days of the request. Legible photocopies of the product transfer documents are acceptable.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.

### § R3-7-759. Testing Methodologies

A. Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or [www.astm.org](http://www.astm.org) . A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or [www.arb.ca.gov](http://www.arb.ca.gov) .

B. An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure the oxygenate content in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.

C. Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.

D. A test method that the Division determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The Division has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the Division shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The Division shall approve a proposed test method only if the Division determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.

E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

#### History:

**Ariz. Admin. Code R3-7-759 Testing Methodologies (Arizona  
Administrative Code (2022 Edition))**

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Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.  
Amended by final rulemaking at 24 A.A.R. 2666, effective 11/10/2018.

**§ R3-7-760. Compliance Surveys**

A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the associate director. The associate director shall approve a compliance survey program plan if it:

1. Consists of at least four VOC and NO<sub>x</sub> surveys conducted at least one per month between May 1 through September 15 of each year, and
2. Complies with subsection (J).

B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the associate director shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the associate director's order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.

C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:

1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);
2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);
3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;
4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and
5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the associate director to ensure the validity of analysis results.

D. If the associate director determines that a sample used in a compliance survey does not comply with R3-7-751 or another requirement under this Article, the associate director shall take enforcement action against the registered supplier.

E. A registered supplier shall comply with the following VOC and NO<sub>x</sub> compliance survey requirements:

1. For each compliance survey sample, determine the VOC and NO<sub>x</sub> emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NO<sub>x</sub> emissions reductions at 40 CFR 80.45, as incorporated by reference in R3-7-702;
2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
3. The CBG-covered area fails a NO<sub>x</sub> compliance survey if the NO<sub>x</sub> emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NO<sub>x</sub> emissions reduction percentage in Table 1, column A.

F. A registered supplier shall determine the result of the series of NO<sub>x</sub> compliance surveys conducted May 1 through September 15 as follows:

1. For each compliance survey sample, the NO<sub>x</sub> emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NO<sub>x</sub> emissions reduction at 40 CFR 80.45, as incorporated by reference in R3-7-702; and
2. The CBG-covered area fails the NO<sub>x</sub> series of compliance surveys conducted May 1 through September 15 if the NO<sub>x</sub> emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NO<sub>x</sub> emissions reduction percentage in Table 1, column A.

G. General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The associate director shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:

1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:

- a. The surveyor shall not be an employee of any registered supplier,
  - b. The surveyor shall not have an obligation to or interest in any registered supplier, and
  - c. The registered supplier shall not have an obligation to or interest in the surveyor;
2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen (by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;
  3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
  4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the associate director, within 30 days following submission of the survey report required under subsection (G)(6);
  5. Requires that the surveyor permit a Division official to monitor sample collection, transportation, storage, and analysis at any time;
  6. Requires the surveyor to submit a report of each survey to the associate director within 30 days after sampling for the survey is completed that includes the following information:
    - a. Name of the person conducting the survey;
    - b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
    - c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
    - d. Identification of the area from which survey samples were selected;
    - e. Dates on which the survey was conducted;

- f. Address of each facility at which a sample was collected, and the date of collection;
  - g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NO<sub>x</sub> emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
  - h. Name and address of each laboratory at which samples were analyzed;
  - i. Description of the method used to select the facilities from which a sample was collected;
  - j. Number of samples collected from each facility;
  - k. Justification for excluding a collected sample from the survey, if one was excluded; and
  - l. Average VOC and NO<sub>x</sub> emissions reduction percentage.
- H. An independent surveyor shall begin each survey on a date selected by the associate director. The associate director shall notify the surveyor of the date selected at least 10 business days before the survey is to begin.
- I. To obtain the associate director's approval of a compliance survey program plan, the person seeking approval shall:
- 1. Submit the plan to the associate director no later than January 1 to cover the survey period of May 1 through September 15 of each year, and
  - 2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.
- J. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier shall submit to the associate director a copy of the contract with the independent surveyor, proof that the money necessary to

conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB**

A. Persons liable. If motor fuel designated as Arizona CBG or AZRBOB does not comply with R3-7-751, the following are liable for the violation:

1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.

B. Defenses.

1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:

a. That the violation was not caused by the person or person's employee or agent;

b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and

c. That the person had a quality assurance sampling and testing program, as described in subsection (C) in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.

2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:

a. A violation of law other than A.R.S. Title 3, Chapter 19, Article 6, this Article, or an act of sabotage or vandalism;

- b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or
  - c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.
3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.
- C. Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a motor fuel dispensing site or fleet owner facility, a person shall present evidence:
- 1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in R3-7-751; and
  - 2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in R3-7-751:
    - a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and
    - b. The person remedies the violation as soon as practicable.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-762. Penalties**

Any person who violates any provision of this Article is subject to the following:

1. Prosecution for a Class 2 misdemeanor under A.R.S. §3-3473(B)(4);
2. Civil penalties in the amount of \$500 per violation under A.R.S. §3-3475;  
and
3. Stop-use, stop-sale, hold, and removal orders under A.R.S. §3-3415(A)(2).

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1001. Material Incorporated by Reference**

The following documents are incorporated by reference and on file with the Division. The documents incorporated by reference contain no later amendments or editions:

1. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
2. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
3. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overflow Protection Devices and Spill Container Drain Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
4. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
5. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
6. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1002. Exemptions**

A. The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.

B. An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. §3-3512(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline dispensing site shall submit an annual throughput report to the Division, using a form prescribed by the Division, no later than March 30 of each year and attest to the throughput during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. §3-3512(B) was exceeded, the Division shall deem the exemption void.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1003. Equipment and Installation**

A. The Division shall reject a vapor recovery system or component from future installation if:

1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-1001; or
3. The vapor recovery system or component fails greater than 20% of Division inspections for that system or component or the Division receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Division provides at least 30 days public notice of its proposed rejection.

B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining Division approval under R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the Division as required under A.R.S. §3-3512.

C. If Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.

E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval**

A. A person shall not begin to construct a site requiring a stage I vapor recovery system or to make a major modification of an existing vapor recovery system before obtaining approval of an authority to construct plan application. A major modification is:

1. Adding or replacing a gasoline storage tank that is equipped with a Division approved stage I vapor recovery system;
2. Modifying, adding, or replacing underground vent piping; or
3. Conducting construction under R3-7-913(H)(2).

B. A person shall file with the Division a written change order, using a form provided by the Division, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the Division issues an authority to construct plan approval. The person shall not make any modification until the Division approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Division, on a form provided by the Division, the following:

1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
5. The application fee specified under R3-7-1006.

D. A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:

1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;

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3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;
5. Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
6. Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
7. Has tank vent pipes with a minimum inside diameter of:
  - a. Two inches if the pipe is not manifolded, or
  - b. Three inches from the point of manifold if the pipe is manifolded;
8. Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
9. If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);
10. Has risers into gasoline storage tanks that are capped with UL-approved caps;
11. Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;
12. Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a reflective effectiveness of at least 55 percent. Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e. 58YY 88/180 where the number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and
13. Complies with other requirements outlined in the authority to construct permit.

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E. After review and approval of the authority to construct plan, the Division shall issue the authority to construct plan approval and mail, fax, or e-mail the plan approval to the address indicated on the application.

1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Division review.
2. Construction of a stage I vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

F. The Division shall deny an authority to construct plan for any of the following reasons:

1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

G. If excavation is involved, the Division may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the authority to construct plan approval. The owner or operator of a vapor recovery system or component shall give the Division notice by fax or e-mail at least two business days before the underground piping is complete to schedule the inspection. The Division may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

H. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to R3-7-1005.

I. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**Table a Arizona Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB (Arizona Administrative Code (2022 Edition))**

**TABLE A. Arizona Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB**

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003) <sup>A</sup>	1.65	D5580-00	1.4
Benzene	V%	D3606-99 (2007)	0.21	D5580-00	0.1409 (X) <sup>1-133</sup>
Olefins	V%	D1319-02a (2003)	0.32 (x) <sup>0.5</sup>	D6550-00 (2005) if correlated to D1319	0.32 (X) 0.5; Footnote 1
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method
	W%	D4815-99 (2004) <sup>B</sup>	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	0.2217 (x) <sup>0.92</sup> wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) >

**Table a Arizona Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB (Arizona Administrative Code (2022 Edition))**

					30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

<sup>A</sup> A refinery or importer may determine aromatics content using ASTM D1319-02a (2003) if the result is correlated to ASTM D5769-98 (2004). <sup>B</sup> A refinery or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005). Footnotes: 1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit." 2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1005. Initial Inspection and Testing**

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval and this subsection. The inspection shall be witnessed by the Division at a time approved by the Division and include the following tests:

1. A pressure decay test for each vapor control system including underground storage tanks and tank vents using CARB TP-201.3 test procedures. All test procedures pertaining to stage I vapor recovery systems shall be followed except the post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;
2. A test of each pressure vacuum vent valve using CARB TP-201.1E test procedures;
3. A Tie-Tank test using CARB TP-201.3C test procedure; and
4. Procedures specified by a manufacturer or CARB for testing the vapor recovery system.

B. If there is a difference between a testing contractor's test results and the Division's test results, the Division's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the Division by calling the Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Division shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the Division when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Division approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Division shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.

1. The Division shall take enforcement action if the person fails to timely reschedule the inspection.

2. The registered service agency shall notify the Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.

3. The Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the inspection date and time.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1006. Fee**

The authority to construct plan approval fee is \$250.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017. New Section R3-7-1006 recodified from Section R20-2-1006 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

**§ R3-7-1007. Operation**

A. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 3, Chapter 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or Division approval under A.R.S. §3-3512 for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or component if one or more of the following system or component defects occur:

1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;
2. Vent pipes do not meet the CARB-specified paint color code specified in R3-7-1004(D)(13);
3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:
  - a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
  - b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
  - c. Coaxial stage I is not equipped with a functioning CARB-approved poppeted fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or
  - d. A fill tube is missing, broken, or not sealed; has holes or damaged overflow prevention; or the high point of the bottom opening is more than six inches above the tank bottom;

4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
  5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
  6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the authority to construct permit for that system is missing, disconnected, or malfunctioning.
- E. For proper operation of a stage I system under A.R.S. §3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.
- F. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1008. Training and Public Education**

Each owner or operator of a gasoline dispensing site using stage I vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training onsite and make the documentation available to the Division on request.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1009. Recordkeeping and Reporting**

A. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain records of the inspections done under R3-7-1007.

B. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. §3-3512(B) from requirements to install and operate stage I vapor recovery equipment shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the Division within 24 hours after request. The owner or operator shall submit to the Division the throughput information required under R3-7-1002(B). If any throughput requirement provided in A.R.S. §3-3512(B) and this Article is exceeded for any month, the owner or operator shall notify the Division in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.

D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under R3-7-913 shall maintain a copy of the decommissioning checklist required under R3-7-913(I) for three years.

E. Except as specified in subsection (D), the owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Division upon request.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1010. Annual Testing and Inspection**

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Division approves the inspection date and time.

B. The annual inspection shall include the tests defined in R3-7-1005(A)(1) through (3) that pertain to the specific vapor recovery system installed.

C. To verify proper operation of a vapor recovery system, the Division may perform or may require registered service representatives to perform additional tests under R3-7-1005(A)(4) during the annual inspection and testing. The Division shall provide registered service agencies with six months' notice before requiring additional annual testing under R3-7-1005(A)(4).

D. If there is a difference between a testing contractor's test results and the Division's test results, the Division's test results prevail.

E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all tests required under subsection (B).

F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

G. A person shall notify the Division when a vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the Division approves the reinspection date and time.

H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the Division issues to registered service agencies.

I. A person that cancels an annual inspection shall notify the Division by calling the Division's designated telephone number at least one hour before

the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Division shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Division shall take enforcement action if a person does not comply with this subsection.

J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1012. Enforcement**

If the Division finds that a stage I vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title 3, Chapter 19, the Division shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title 3, Chapter 19 and this Chapter before the vapor recovery system or component is placed in service.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

**§ R3-7-1013. Stage II Vapor Recovery**

If the Division identifies a gasoline dispensing site operating a stage II vapor recovery system within an ozone nonattainment area designated as moderate, serious, severe, or extreme by the EPA under section 107(d) of the Clean Air Act or in area A after September 30, 2018, the Division shall issue an administrative order and civil penalty under A.R.S. §3-3475 and require that the stage II vapor recovery system be decommissioned within three months after identification. Each day the stage II vapor recovery system is not decommissioned after the time specified in the administrative order constitutes a separate violation for the purpose of calculating the civil penalty under A.R.S. §3-3475.

**History:**

Adopted by final rulemaking at 23 A.A.R. 2280, effective 10/2/2017.

# **AUTHORIZING STATUTES**

### 3-107. Organizational and administrative powers and duties of the director

#### A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.
2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.
3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.
5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.
6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.
7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.
8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.
9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.
10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.
11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.
12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

#### B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.
2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.
3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.
4. Cooperate with the office of tourism in distributing Arizona tourist information.
5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.
6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.
7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.
8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

### 3-3414. Powers and duties; definition

A. The division shall:

1. Maintain custody of the state reference standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the federal government or that are otherwise approved as being satisfactory by the national institute of standards and technology.
2. Keep the state reference standards in a safe and suitable place in the metrology laboratory of the division and ensure that they are not removed from the laboratory except for repairs or for calibration as may be prescribed by the national institute of standards and technology.
3. Keep accurate records of all standards and equipment.
4. Adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to title 41, chapter 6. In adopting these rules, the associate director shall consider, as far as is practicable, the requirements established by other states and by authority of the United States, except that rules shall not be made in conflict with this chapter.
5. Publish rules adopted pursuant to this chapter and issue appropriate copies at no cost to all new applicants for licensure and certification. Updated copies of the rules shall be distributed, on request, at no cost to the public.
6. Investigate complaints made to the division concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of this chapter, in order to educate the public and regulated persons to encourage and promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.
7. Establish labeling standards, establish standards of weight, measure or count and establish reasonable standards of fill for any packaged commodity, and may establish standards for open dating information.
8. Grant, pursuant to this chapter, exemptions from the licensing provisions of this chapter for weighing and measuring instruments, standards or devices when the ownership or use of the instrument or device is limited to federal, state or local government agencies in the performance of official functions. On request, the division may conduct inspections of instruments, standards or devices and shall charge a fee pursuant to section 3-3452.
9. Delegate to appropriate personnel any of the responsibilities of the associate director for the proper administration of this chapter.
10. Inspect and test weights and measures that are kept, offered or exposed for sale.
11. Inspect and test, to ascertain if they are correct, weights and measures that are commercially used either:
  - (a) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.
  - (b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

12. Test, at random, commodities, weights and measures that are used in public institutions for which monies are appropriated by the legislature. The testing of commodities, weights and measures in public institutions includes items:
- (a) That have historically been of short weight, measure or count.
  - (b) That have been found to be of short weight, measure or count by other jurisdictions.
  - (c) That are to be tested as part of a regional or national survey.
13. Test, approve for use and affix a seal of approval for use on all weights, measures and commercial devices that are manufactured in or brought into this state as it finds to be correct and shall reject and mark as rejected weights, measures and devices that it finds to be incorrect. Weights, measures and devices that have been rejected may be seized by the division if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The division shall condemn and may seize weights, measures and devices that are found to be incorrect and that are not capable of being made correct. The division may affix a nontampering seal to commercial devices that are tested and found to be within applicable tolerance.
14. Sample and test motor fuel that is stored, sold or exposed or offered for sale or that is stored for use by a fleet owner to determine whether the motor fuel meets the standards for motor fuel set forth in section 3-3433 and article 6 of this chapter and in any rule adopted by the associate director pursuant to this chapter.
15. Randomly witness tests on all mandated vapor recovery systems that are installed or operated in this state and, if the systems are determined to be in compliance with the law, approve those systems for use and reject, mark as rejected and stop the use of those systems that are determined not to be in compliance with the law.
16. Inspect facilities at which motor fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.
17. Publish and distribute to consumers and regulated persons weighing and measuring information.
18. Weigh, measure or inspect commodities that are kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this chapter or rules adopted pursuant to this chapter. In carrying out this section, the associate director shall employ recognized sampling procedures, such as are designated in appropriate national institute of standards and technology handbooks and supplements to those handbooks, except as modified or rejected by rule.
19. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. These variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.
20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this chapter. The associate director may prescribe or provide the official test and inspection forms to be used in the enforcement of this chapter.
21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

22. Subject to title 41, chapter 4, article 4, employ such personnel as needed to assist in administering this chapter.

23. Ensure that any information that is required to be filed with the division, that relates to the contents of motor fuels that are sold in this state and that is a trade secret as defined in section 49-201 is not disclosed.

24. Establish by rule labeling standards for tanks and containers of motor fuels.

B. The associate director may provide for the periodic examination and inspection of metering devices, including devices used to measure usage of electricity, natural gas or water by a consumer. Examination and inspection authority shall not apply to metering devices owned by federal, state or local government agencies unless requested by the government agency that owns the metering devices.

C. The associate director may establish standards for the presentation of cost-per-unit information. This subsection does not mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The associate director, when necessary to carry out this chapter, may adopt and enforce rules relating to quality standards for motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The associate director shall adopt rules to ensure that oxygenated fuels, as described in article 6 of this chapter, that are stored, used, sold or exposed or offered for use or sale are blended and stored, sold, exposed or offered in such a manner as to ensure that the oxygenated fuels are properly blended, that they meet the standards set forth in section 3-3433 and article 6 of this chapter, and in rules adopted pursuant to this chapter, and that dispensers at which the oxygenated fuels are dispensed are labeled as defined by rule of the division in such a manner as to notify persons of the type of oxygenated fuel being dispensed and the maximum percentage of oxygenate by volume contained in the oxygenated fuel. The associate director of the division shall consult with the director of the department of environmental quality in adopting rules pursuant to this subsection.

E. Testing and inspection conducted pursuant to this chapter shall be done, to the extent practicable, without prior notice, by a random systematic method determined by the associate director or in response to a complaint by the public. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the associate director in accordance with title 41, chapter 23 or by a registered service agency or registered service representative licensed pursuant to section 3-3454. The associate director shall establish qualifications of persons and firms for selection for purposes of this subsection. The persons or firms conducting the testing and inspection shall immediately report to the division any violations of this chapter and incorrect weights, measures, devices, vapor recovery systems or vapor recovery components for investigation and enforcement by the division. A person or firm that tests or inspects a weight, measure, device, vapor recovery system or vapor recovery component that is rejected shall not correct the defect causing the rejection without the permission of the division.

F. During the course of an investigation or an enforcement action by the division, information regarding the complainant is confidential and is exempt from title 39, chapter 1, unless the complainant authorizes the information to be public.

G. For the purposes of the labeling requirements prescribed in this section, "oxygenated fuel" means a motor fuel blend containing 1.5 percent or more by weight of oxygen.

# **IMPLEMENTING STATUTES**

### 3-3413. Technical requirements for commercial devices

The specifications, tolerances and other technical requirements for commercial devices as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 44, "specifications, tolerances, and other technical requirements for commercial weighing and measuring devices" shall apply to commercial weighing and measuring devices in the state. The edition of the national institute of standards and technology handbook 44 shall be determined by rule, pursuant to section 3-3414, subsection A, paragraph 4.

### 3-3414. Powers and duties; definition

A. The division shall:

1. Maintain custody of the state reference standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the federal government or that are otherwise approved as being satisfactory by the national institute of standards and technology.
2. Keep the state reference standards in a safe and suitable place in the metrology laboratory of the division and ensure that they are not removed from the laboratory except for repairs or for calibration as may be prescribed by the national institute of standards and technology.
3. Keep accurate records of all standards and equipment.
4. Adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to title 41, chapter 6. In adopting these rules, the associate director shall consider, as far as is practicable, the requirements established by other states and by authority of the United States, except that rules shall not be made in conflict with this chapter.
5. Publish rules adopted pursuant to this chapter and issue appropriate copies at no cost to all new applicants for licensure and certification. Updated copies of the rules shall be distributed, on request, at no cost to the public.
6. Investigate complaints made to the division concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of this chapter, in order to educate the public and regulated persons to encourage and promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.
7. Establish labeling standards, establish standards of weight, measure or count and establish reasonable standards of fill for any packaged commodity, and may establish standards for open dating information.
8. Grant, pursuant to this chapter, exemptions from the licensing provisions of this chapter for weighing and measuring instruments, standards or devices when the ownership or use of the instrument or device is limited to federal, state or local government agencies in the performance of official functions. On request, the division may conduct inspections of instruments, standards or devices and shall charge a fee pursuant to section 3-3452.
9. Delegate to appropriate personnel any of the responsibilities of the associate director for the proper administration of this chapter.
10. Inspect and test weights and measures that are kept, offered or exposed for sale.
11. Inspect and test, to ascertain if they are correct, weights and measures that are commercially used either:
  - (a) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.
  - (b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

12. Test, at random, commodities, weights and measures that are used in public institutions for which monies are appropriated by the legislature. The testing of commodities, weights and measures in public institutions includes items:
- (a) That have historically been of short weight, measure or count.
  - (b) That have been found to be of short weight, measure or count by other jurisdictions.
  - (c) That are to be tested as part of a regional or national survey.
13. Test, approve for use and affix a seal of approval for use on all weights, measures and commercial devices that are manufactured in or brought into this state as it finds to be correct and shall reject and mark as rejected weights, measures and devices that it finds to be incorrect. Weights, measures and devices that have been rejected may be seized by the division if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The division shall condemn and may seize weights, measures and devices that are found to be incorrect and that are not capable of being made correct. The division may affix a nontampering seal to commercial devices that are tested and found to be within applicable tolerance.
14. Sample and test motor fuel that is stored, sold or exposed or offered for sale or that is stored for use by a fleet owner to determine whether the motor fuel meets the standards for motor fuel set forth in section 3-3433 and article 6 of this chapter and in any rule adopted by the associate director pursuant to this chapter.
15. Randomly witness tests on all mandated vapor recovery systems that are installed or operated in this state and, if the systems are determined to be in compliance with the law, approve those systems for use and reject, mark as rejected and stop the use of those systems that are determined not to be in compliance with the law.
16. Inspect facilities at which motor fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.
17. Publish and distribute to consumers and regulated persons weighing and measuring information.
18. Weigh, measure or inspect commodities that are kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this chapter or rules adopted pursuant to this chapter. In carrying out this section, the associate director shall employ recognized sampling procedures, such as are designated in appropriate national institute of standards and technology handbooks and supplements to those handbooks, except as modified or rejected by rule.
19. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. These variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.
20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this chapter. The associate director may prescribe or provide the official test and inspection forms to be used in the enforcement of this chapter.
21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

22. Subject to title 41, chapter 4, article 4, employ such personnel as needed to assist in administering this chapter.

23. Ensure that any information that is required to be filed with the division, that relates to the contents of motor fuels that are sold in this state and that is a trade secret as defined in section 49-201 is not disclosed.

24. Establish by rule labeling standards for tanks and containers of motor fuels.

B. The associate director may provide for the periodic examination and inspection of metering devices, including devices used to measure usage of electricity, natural gas or water by a consumer. Examination and inspection authority shall not apply to metering devices owned by federal, state or local government agencies unless requested by the government agency that owns the metering devices.

C. The associate director may establish standards for the presentation of cost-per-unit information. This subsection does not mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The associate director, when necessary to carry out this chapter, may adopt and enforce rules relating to quality standards for motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The associate director shall adopt rules to ensure that oxygenated fuels, as described in article 6 of this chapter, that are stored, used, sold or exposed or offered for use or sale are blended and stored, sold, exposed or offered in such a manner as to ensure that the oxygenated fuels are properly blended, that they meet the standards set forth in section 3-3433 and article 6 of this chapter, and in rules adopted pursuant to this chapter, and that dispensers at which the oxygenated fuels are dispensed are labeled as defined by rule of the division in such a manner as to notify persons of the type of oxygenated fuel being dispensed and the maximum percentage of oxygenate by volume contained in the oxygenated fuel. The associate director of the division shall consult with the director of the department of environmental quality in adopting rules pursuant to this subsection.

E. Testing and inspection conducted pursuant to this chapter shall be done, to the extent practicable, without prior notice, by a random systematic method determined by the associate director or in response to a complaint by the public. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the associate director in accordance with title 41, chapter 23 or by a registered service agency or registered service representative licensed pursuant to section 3-3454. The associate director shall establish qualifications of persons and firms for selection for purposes of this subsection. The persons or firms conducting the testing and inspection shall immediately report to the division any violations of this chapter and incorrect weights, measures, devices, vapor recovery systems or vapor recovery components for investigation and enforcement by the division. A person or firm that tests or inspects a weight, measure, device, vapor recovery system or vapor recovery component that is rejected shall not correct the defect causing the rejection without the permission of the division.

F. During the course of an investigation or an enforcement action by the division, information regarding the complainant is confidential and is exempt from title 39, chapter 1, unless the complainant authorizes the information to be public.

G. For the purposes of the labeling requirements prescribed in this section, "oxygenated fuel" means a motor fuel blend containing 1.5 percent or more by weight of oxygen.

### 3-3415. Enforcement powers of the associate director, agents and inspectors

A. When necessary for the enforcement of this chapter and rules adopted pursuant to this chapter, the associate director or the associate director's agents and inspectors shall:

1. Enter any commercial, nonprofit business or governmental premises during normal operating hours, except that if the premises are not open to the public, the associate director or the associate director's agents and inspectors shall first present their credentials.
2. Issue stop-use, hold and removal orders with respect to any weights and measures commercially used, stop-sale, hold and removal orders with respect to any commodities, bulk commodities or motor fuel kept, offered or exposed for sale, stop-use and hold orders with respect to a vapor recovery system or parts of a vapor recovery system and stop-use, stop-sale, hold and removal orders with respect to any motor fuel found to be in violation of this chapter or rules adopted pursuant to this chapter.
3. Seize for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of this chapter or rules adopted pursuant to this chapter.
4. Stop any commercial vehicle on reasonable cause to believe that the vehicle contains evidence of a violation of this chapter and, after presentment of the credentials of the associate director or the associate director's agents or inspectors, inspect the contents, require that the person in charge of the vehicle produce any documents in the person's possession concerning the contents and require the person to proceed with the vehicle to some specified place for inspection.

B. With respect to the enforcement of this chapter, the associate director or the associate director's agents or inspectors may issue a warning requiring corrective action or a citation to any violators of this chapter in accordance with section 13-3903.

C. The associate director or the associate director's agents or inspectors may apply for a special inspection warrant for inspection of real or personal property for the purpose of enforcement of this chapter. The special inspection warrant shall be issued as provided in section 49-433.

3-3416. State metrology laboratory; operation; standards; testing

- A. The associate director shall establish and operate within the division the state metrology laboratory.
- B. A commercial device shall not be approved for use in the state unless the design and construction comply with national institute of standards and technology requirements.
- C. All commercial devices approved and certified shall meet the tolerance, design and construction requirements prescribed by the national institute of standards and technology.
- D. All commercial devices that are determined unfit for approval shall be rejected without testing.
- E. All weights, weight sets, measures, meters, counters or other devices that are used by registered service representatives shall show an indication of the approval date and jurisdiction issuing the approval.
- F. All persons who install, service or repair commercial devices in this state shall submit the test equipment used to the division's metrology laboratory for approval at least annually. A certificate of approval that specifically identifies the test equipment and that is issued by another state laboratory may be accepted in lieu of submitting equipment if the other state laboratory is certified by the national institute of standards and technology.
- G. All weights, measures, meters, counters or other devices shall be tested in the order they are scheduled in the laboratory unless arrangements for testing have been made in advance.
- H. Work that is completed in the metrology laboratory shall be paid for pursuant to the fees prescribed in the rules of the division.

### 3-3431. Sale of commodities

- A. A person shall not sell or offer or expose for sale less than the quantity the person represents.
- B. As a buyer, a person shall not take any more than the quantity the person represents when the person furnishes the weight or measure by means of which the quantity is determined.
- C. A person shall not misrepresent the price of any commodity or service sold or offered, exposed or advertised for sale by weight, measure or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person.
- D. Except as otherwise provided by the associate director, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure or by count, as long as the method of sale provides accurate quantity information.
- E. If the quantity is determined by the seller, bulk sales shall be accompanied by a delivery ticket containing the following information unless exempted by rule:
1. The name and address of the vendor and purchaser.
  2. The date delivered.
  3. The quantity delivered and the quantity on which the price is based, if this differs from the delivered quantity.
  4. The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale.
  5. The count of individually wrapped packages, if more than one.
- F. Except as otherwise provided in this chapter or by rules adopted pursuant to this chapter, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:
1. The identity of the commodity in the package, unless the commodity can easily be identified through the wrapper or container.
  2. The quantity of contents in terms of weight, measure or count.
  3. The name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered or exposed for sale or sold in any place other than on the premises where packed.
  4. The price, except as provided in subsections L, M and N of this section.
- G. In addition to the declarations required by subsection F of this section, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

H. If a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or rule to appear on the package. If a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

I. The packager of a short weighted item offered for sale is liable under this chapter.

J. If a retail seller engaging in the sale of motor fuel posts the selling price of the fuel on the premises, the seller shall post the selling price only by the price per gallon, except that if the fuel is dispensed by a measure other than whole gallons the seller shall represent the selling price for each unit of such other measure on the individual pump or other dispensing device. If a retail seller engaging in the sale of motor fuel advertises the price of the fuel off the premises, the retail seller shall advertise the price only by the price per gallon.

K. The owner or operator of a motor fuel dispensing site shall ensure that a sticker provided by the department of transportation that is three inches by five inches and that depicts the amount of federal and state taxes imposed on one gallon of gasoline is displayed on one side of each motor fuel dispenser. The sticker required by this subsection shall contain white lettering on a black background or black lettering on a white background to ensure a contrasting color to the motor fuel dispenser and shall be placed on the upper sixty percent of the dispenser. The division shall use stickers provided by the department of transportation. A template of the sticker shall be placed on the division's website for use by retailers.

L. Instead of each package bearing the price as required under subsection F, paragraph 4 of this section, the seller may post the price of the package on the shelf or may display the price at or near the point of display of the product.

M. Instead of each package bearing the price as required under subsection F, paragraph 4 of this section, if the package is available for sale only with the assistance of a salesperson, the seller may display the package at a service counter staffed by the salesperson.

N. Instead of each package bearing the price as required under subsection F, paragraph 4 of this section, if the package is offered for sale at a price reduced by a percentage or a fixed amount from a previously offered price or at a reduced price for the purchase of multiple items, the reduction shall be displayed at the point of display of the package or near the point of display of the package in the manner required by this section.

O. On the request of a consumer, a retail seller shall provide:

1. A means of recording prices such as grease pencils, felt markers, scanners or other similar instruments for recording the price.
2. A written statement of the retail seller's policies regarding errors in pricing.

### 3-3433. Standards for motor fuel; exceptions

A. Except as provided in section 3-3434 and subsections C, D, E, F, G and K of this section, a retail seller or fleet owner shall not store, sell or expose or offer for sale any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the associate director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive. This subsection does not prohibit product origination disclaimer labeling on the retail dispenser.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the associate director of the division by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A shall be 9.0 pounds per square inch from and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event is exempt from this subsection.

E. From and after September 30 through March 31 of each year, a person shall not supply or sell gasoline that exceeds the ASTM D4814 class A vapor pressure/distillation class ten volume percent evaporated distillation temperature.

F. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand persons or more and any portion of a county contained in area A shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event is exempt from this subsection.

G. Exclusively for the purposes of transportation conformity and only if the administrator of the United States environmental protection agency fails to approve the applicable plan required pursuant to section 49-406, maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area B shall be ten pounds per square inch from and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event is exempt from this subsection.

H. Notwithstanding subsections D, F and G of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by gasoline providers and that the director and the associate director determine will result in either of the following:

1. Motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection D of this section and section 3-3492. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by this section and with the minimum oxygen content or percentage by volume of ethanol as prescribed by section 3-3492.

2. Motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection F of this section. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection F of this section.

I. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection H of this section and this subsection may be used by any gasoline provider unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Gasoline providers that use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director no later than sixty days before the first day of a gasoline control period.

J. A person shall not sell or offer or expose for sale diesel fuel grade 1, 2 or 4 as defined in ASTM D975, biodiesel, biodiesel blends or biomass-based diesel or biomass-based diesel blends that contain sulfur in excess of fifteen parts per million. Locomotive and marine diesel fuel is exempt from this requirement if the fuel meets the requirements of 40 Code of Federal Regulations section 80.513(g) and (h).

K. A person shall label dispensers at which biodiesel, biodiesel blends, biomass-based diesel or biomass-based diesel blends are dispensed in conformance with 16 Code of Federal Regulations part 306. This section does not preclude a person from labeling a dispenser that dispenses diesel fuel that contains up to five percent biodiesel or biomass-based diesel with a label that states "may contain up to five percent biodiesel" or "may contain up to five percent biomass-based diesel".

L. For biodiesel blends that contain more than five percent by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies the transferee of the percent by volume of biodiesel in the product.

M. The associate director shall adopt rules regarding the establishment and enforcement of all of the following:

1. National or federal standards for individual biofuels and biofuel blends.
2. United States environmental protection agency and ASTM test methods for individual biofuels and biofuel blends.
3. Registration and reporting requirements for producers, blenders and suppliers of biofuels and biofuel blends.
4. Labeling requirements for biofuels and biofuel blends other than biodiesel or biodiesel blends.
5. Quality assurance and quality control programs for producers, blenders and suppliers of biofuels and biofuel blends addressing rack, batch or other blending.
6. Requirements that the dispensing equipment meet appropriate UL ratings where available and applicable, that the equipment comply with rules adopted by the division relating to approval, installation and sale of devices and that the equipment be compatible with the products being dispensed.

N. A biofuels or biofuel blends producer, blender, distributor, supplier or retail seller that is in compliance with this section and the rules adopted pursuant to this section is not liable to a consumer for any injuries or property damage related to a consumer who misfuels.

O. If any person transfers custody or title of a diesel fuel or distillate, biodiesel, a biodiesel blend, biomass-based diesel or a biomass-based diesel blend, except if the fuel is dispensed into a motor vehicle or nonroad, locomotive or marine equipment, the transferor shall provide to the transferee product transfer documents that conform with 40 Code of Federal Regulations section 80.590.

P. If the transfer of a motor fuel is from a terminal, storage facility, or transmix facility, the product transfer documents shall contain the information prescribed in subsection O of this section. In addition, the fuel transporter shall ensure that the name and address of the final destination for the shipment, as prescribed by division rule, are included and that the product transfer documents accompany the shipment to its final destination.

### 3-3434. Area C; standards for motor fuel; exceptions

- A. Except as provided in subsections C and D of this section, after May 31, 2008, a retail seller or fleet owner shall not store, sell or expose or offer for sale in area C any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the associate director.
- B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive.
- C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the associate director of the division by rule.
- D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area C shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event is exempt from this subsection.
- E. The associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by gasoline providers and that the director and associate director determine will result in motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection D of this section. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection D of this section.
- F. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection E of this section and this subsection may be used by any gasoline provider unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Gasoline providers that use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director no later than sixty days before the first day of a gasoline control period.

3-3452. Licensing fees; proration; cancellation for nonpayment

A. The following fees shall be paid to the division as license fees for devices used for commercial purposes:

Schedules of Fees

1. Weighing devices:

0 - 500 pounds capacity (or metric equivalent) \$ 12.00

501 - 2,000 pounds capacity 18.00

2,001 - 7,500 pounds capacity 36.00

7,501 - 20,000 pounds capacity 80.00

20,001 - 60,000 pounds capacity 120.00

60,001 pounds capacity and over 180.00

2. Liquid metering devices (meters) other than

|||||for liquid petroleum gas and utility meters:

maximum 12 gallons per minute and under 12.00

maximum 13 - 150 gallons per minute 36.00

maximum 151 - 500 gallons per minute 90.00

maximum 501 - 1,000 gallons per minute 138.00

maximum 1,001 gallons per minute and over 168.00

3. Motor fuel devices (dispensers) other than

|||||for liquid petroleum gas (not including

|||||satellite hoses or nozzles):

Standard Vapor Recovery Test

each meter 15.00 30.00

each blending valve 15.00 30.00

high volume (over 19 gallons per minute)

diesel per hose and nozzle 15.00

keylock, limited access, with accumulators,

per hose and nozzle 22.50

remote indicator and control unit (no hoses

or nozzles) (accessory only) 22.50

#### 4. Liquid measuring devices for liquid petroleum

|||||gas (meters):

small bottle fill measuring devices 24.00

motor fuel measuring devices, uncompensated 24.00

motor fuel measuring devices, temperature

compensating, including compressed natural

gas filling devices 48.00

motor fuel measuring devices, keylocks 48.00

3/4" and 1" meters, uncompensated 48.00

1 1/4", 1 1/2" and 1 3/4" meters, uncompensated 72.00

2" meters and larger, uncompensated 72.00

3/4" and 1" meters, temperature compensating 54.00

1 1/4", 1 1/2" and 1 3/4" meters, temperature

compensating 90.00

2" meters and larger, temperature compensating 96.00

5. Linear measuring devices:

|||||||all linear measuring mechanical devices 24.00

6. Time measuring devices:

|||||||all time measuring mechanical, electrical and

||||||| electronic devices 24.00

7. Counting devices:

all mechanical and electronic counting devices 12.00

B. Testing, inspection, certification and calibration fees shall be paid pursuant to the fee schedule set forth in subsection A of this section or the rules of the division. The division shall waive license fees for customer parking time measuring meters owned by municipalities.

C. Issuance or renewal of license as:

1. Public weighmaster 48.00

2. Registered service agency 24.00

3. Registered service representative 4.80

D. The fees set forth in this section are the maximum amounts that may be charged, but the associate director, at the associate director's discretion, may reduce the fees to any amount the associate director deems necessary.

E. The associate director may prorate the fees set forth in this section for partial-year application.

F. If a person fails to pay a license, permit or certification fee on or before the date the fee is due, the division shall impose a penalty equal to twenty percent of the fee. For each thirty-day period after the date the fee is due, the division shall impose an additional penalty equal to twenty percent of the fee. If a person fails to pay a license, permit or certification fee and all related penalties for ninety days after the fee is due, the division shall cancel the license, permit or certification.

3-3453. License as public weighmaster or deputy weighmaster required; application; fee; renewal; training; exemptions

A. A person shall not serve as a public weighmaster or deputy weighmaster unless the person is issued a public weighmaster or deputy weighmaster license by the division in accordance with practices and procedures to be established by the associate director. An applicant for a public weighmaster or deputy weighmaster license shall:

1. Demonstrate a thorough knowledge of all appropriate weights and measures laws, rules and policies.
2. Have possession of, or have available for use, a scale that is of sufficient capacity and size and that is licensed and certified pursuant to section 3-3451.
3. Demonstrate the necessary experience and training to operate the scale.
4. Pass the required examination administered by the division. The associate director may waive the examination required by this paragraph.

B. An application for a public weighmaster or deputy weighmaster license shall be submitted to the division on a form prescribed and furnished by the division and shall be accompanied by the license fee prescribed in section 3-3452. The division shall issue a public weighmaster or deputy weighmaster license for a period of twelve calendar months. The license expires on the first day of the month and year indicated on the license. A public weighmaster or deputy weighmaster license shall be posted at the licensed scale site in a manner that provides the division access to the license during normal business hours.

C. If a licensee submits a license renewal application to the division before the date of expiration of the current license together with the renewal fee prescribed by the division, the existing license shall be valid for thirty days following its expiration date, or until issuance of the renewal license, whichever occurs first.

D. A public weighmaster shall provide the necessary training for any deputy weighmaster using the public weighmaster's seal to certify weigh tickets.

E. Except as otherwise provided in subsection G of this section, the certified weighing of any property, livestock or commodity shall be performed only by a public weighmaster or deputy weighmaster. The following persons are not required to obtain licenses as public weighmasters or deputy weighmasters:

1. A person weighing property, livestock or a commodity that the person or the person's employer is either buying or selling for the own account of the person or the person's employer.
2. A person weighing property, livestock or a commodity in conjunction with or on behalf of a publicly sponsored or nonprofit organization sponsored exposition, fair or show event.

F. The official weighing of vehicles or conveyances by any employee of a city, county or state agency for weight-control regulatory purposes on public highways, roads or streets does not constitute public weighing.

G. On request and without charge, the division may issue a limited weighmaster license to any qualified officer or employee of a city, a county or the state authorizing the officer or employee to act as a public weighmaster only within the scope of the officer's or employee's official employment and

duties in enforcing local ordinances substantially complying with the requirements of this chapter. While performing the duties of a limited weighmaster, a limited weighmaster shall have the limited weighmaster's license in the limited weighmaster's possession.

H. The division shall approve all forms, certificates, seals and other documents together with practices, procedures and equipment used by public weighmasters or deputy weighmasters in the performance of their duties. A public weighmaster or deputy weighmaster shall keep for such a period as the division by rule may require a legible copy of each weight certificate the public weighmaster or deputy weighmaster issues. Copies of weight certificates shall be available at all reasonable times for inspection by the division.

3-3454. License required as registered service agency or registered service representative; qualifications; application; fees; renewal

A. A person shall not operate as a registered service agency or as a registered service representative until a license is issued as provided in this section.

B. An applicant for a registered service agency license shall:

1. Submit application information satisfactory to the division.
2. Comply with section 3-3416, subsection E or provide evidence that the applicant's vapor recovery test equipment has been certified by the manufacturer of the equipment within one year of the date of the application or as deemed appropriate by the division.
3. Pay all required fees.

C. An applicant for a registered service representative license shall:

1. Demonstrate a thorough working knowledge of all appropriate weights and measures laws, orders and rules.
2. Demonstrate to the division that the applicant has possession of, or has available for use, weights and testing equipment appropriate in design and adequate in amount.
3. Demonstrate the necessary knowledge, training and experience regarding appropriate standards and testing equipment to service commercial devices, vapor recovery systems or vapor recovery components.
4. Pass the required examination administered by the division.
5. Pay all required fees.

D. An application for a registered service agency or registered service representative license shall be submitted by the applicant to the division on a form prescribed and furnished by the division. The division shall issue a registered service agency or registered service representative license for a period of twelve calendar months. The license expires on the first day of the month and year indicated on the license. Each license shall contain, among other information, a license number. A registered service agency license shall be posted at the licensed business location in a manner that provides the division with access to the license during normal business hours. While performing the duties of a registered service representative, a registered service representative shall have the registered service representative's license in the registered service representative's possession.

E. If a licensee submits a license renewal application to the division before the date of expiration of the current license, together with the prescribed renewal fee, the existing license is valid for thirty days following its expiration date or until issuance of the renewal license, whichever occurs first.

F. The associate director shall publish, from time to time as the associate director deems appropriate, and may supply on request lists of registered service representatives and registered service agencies.

G. Each registered service representative license issued by the division shall indicate the type of service approved by the division for the licensee.

H. A registered service agency shall use forms and related procedures prescribed by the division in the performance of its duties. A registered service agency shall keep a legible copy of each form used for at least the time period prescribed by the division in its rules. Copies of the forms shall be available during normal business hours for inspection by the division.

3-3471. Registered service representative; powers; violation; classification

A. When any commercial device specified in this chapter is in commercial use and a valid license for the device has not been procured by the owner, the owner's agent or the operator of the device, the division, after giving notice of the licensing requirements to the owner, the owner's agent or the operator, shall prohibit the further commercial use of the unlicensed device until the proper license has been issued. The division may employ and attach to the device such forms, notices or security seals as it considers necessary to prevent the continued unauthorized use of the device.

B. A registered service representative may:

1. With approval of the division, remove an official rejection tag placed on a commercial device, vapor recovery system or vapor recovery component.
2. Place in service, until such time as an official examination can be made, a commercial device, vapor recovery system or vapor recovery component that has been officially rejected or placed out of service.
3. Place in service, until such time as an official examination can be made, a commercial device for which a commercial device application has been completed and submitted to the division.

C. The owner of any business who has not applied for and has not been issued a license for the right to do business, involving the use of a commercial device, by the division and who is found selling or offering for sale or delivering or distributing to a consumer is guilty of a class 2 misdemeanor, and the division shall confiscate and seize the commercial device or any vehicle tank, or vehicle tank and meter, or any other such measuring device used by the business for the sale, delivery or distribution as evidence.

D. The associate director and any other authorized personnel shall not be liable to the owner or any other persons, firms, partnerships, corporations, trusts or agencies for damages, directly or indirectly, caused by or resulting from the seizure.

E. If a commercial device licensed pursuant to this chapter is used contrary to any provision of this chapter or any rule adopted pursuant to this chapter, the division, in addition to any other penalty imposed by this chapter, shall suspend, revoke or refuse to renew the license.

3-3472. Revocation or suspension of licenses; procedure; judicial review

- A. Except as otherwise provided by this section, any proceeding to revoke or suspend a license issued pursuant to this chapter shall be conducted in accordance with title 41, chapter 6, article 10.
- B. The associate director may initiate proceedings for revocation or suspension of a license issued pursuant to this chapter on the associate director's own motion or on a verified complaint for noncompliance with or a violation of this chapter or of any rule adopted pursuant to this chapter.
- C. If, after having been served with the notice of hearing as provided for in title 41, chapter 6, article 10, the licensee fails to appear at the hearing and defend, the division shall proceed to hear evidence against the licensee and shall enter such order as is justified by the evidence, which order shall be final unless the licensee petitions for a review as provided in title 41, chapter 6, article 10.
- D. At all hearings the attorney general of this state, one of the attorney general's assistants, or a special assistant designated by the attorney general shall appear and represent the division.
- E. Except as provided in section 41-1092.08, subsection H, any final administrative decision made pursuant to this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6.

### 3-3473. Violations; classification; jurisdiction

#### A. A person is guilty of a class 1 misdemeanor who:

1. Knowingly hinders, interferes with or obstructs in any way the associate director or any of the associate director's agents or inspectors in entering the premises where a commercial device may be kept for inspecting or testing or in the performance of the official duties of the associate director or the associate director's agent or inspector.
2. Impersonates in any way the associate director or any one of the associate director's agents or inspectors by the use of the associate director's seal or badge or a counterfeit of the associate director's seal or badge, or in any other manner.
3. Uses, or possesses for the purpose of using for any commercial purpose, sells, offers or exposes for sale or hire, or possesses for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure.
4. Sells, or offers or exposes for sale, less than the quantity the person represents of any commodity, thing or service.
5. Takes more than the quantity the person represents of any commodity, thing or service, when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

#### B. A person is guilty of a class 2 misdemeanor who:

1. Uses, or possesses for the purpose of current use for any commercial purpose, a weight or measure that does not bear a seal or mark of approval based on inspection and test as provided in section 3-3414, subsection A, paragraph 11, unless the weight or measure has been exempted from testing by order of the division, or unless the device has been placed in service as provided in this chapter. Any person or persons making use of a commercial device that is subject to this chapter shall report to the associate director or the associate director's representatives, in writing, the number and location of the commercial device and shall promptly report the installation of any new commercial device.
2. Disposes of any rejected or condemned weight or measure in a manner contrary to law or rule.
3. Removes from any weight or measure, contrary to law or rule, any tag, seal or mark placed on the weight or measure by the appropriate authority pursuant to this chapter.
4. Keeps for the purpose of selling, advertising or offering or exposing for sale or sells any commodity, thing or service in a condition or manner contrary to law or rule.
5. Uses in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is so positioned that its indications may not be accurately read and the weighing, metering, measuring or counting operation observed from some position that may reasonably be assumed by a customer.
6. Violates this chapter or rules adopted under this chapter. A continuing violation may be deemed to be a separate violation each day during which the violation is committed for the purpose of imposing a fine.

C. The provisions of this section are in addition to and not in limitation of any other provision of law.

D. The attorney general and the county attorney shall have concurrent jurisdiction to prosecute violations of this chapter.

### 3-3475. Civil penalties; hearing

A. A person who violates this chapter, any rule of the division or any license requirement is subject to a civil penalty imposed by the associate director.

B. A person who violates this chapter, any rule of the division or any license requirement may request an informal or formal hearing to review a civil penalty imposed under this section. If the person requests an informal hearing, the division may conduct the informal hearing, in person or telephonically, to resolve a warning or citation. If the person requests a formal hearing or the warning or citation is not resolved in the informal hearing, the division shall conduct a formal hearing in accordance with title 41, chapter 6, article 10. Except as prescribed in subsection C of this section, the civil penalty shall not exceed one thousand dollars for each infraction nor more than ten thousand dollars for any thirty-day period at each business location, for each registered service representative or for each public weighmaster, provided that no person shall be assessed more than fifty thousand dollars per thirty-day period.

C. The associate director may double the maximum civil penalty if any of the following applies:

1. A commercial device is found to be in violation with results that favor the retailer at more than twice the allowable tolerance as stated in national institute of standards and technology handbook 44.
2. A package is found to exceed the maximum allowable variation for the labeled quantity allowed in national institute of standards and technology handbook 133 or the average error of the lot is twice the sample error limit in favor of the retailer.
3. A vapor recovery system reinspection fails the required tests.
4. A maximum civil penalty has been imposed on a retailer for a price posting or price verification violation and in a reinspection, if conducted within ninety days, the failure rate is ten percent or more and at least one error is in favor of the retailer.
5. A maximum civil penalty has been imposed on a refiner, refinery, pipeline, terminal, fuel transporter, registered supplier or transmix processing facility for a violation of motor fuel quality standards or producing a product transfer document that is incorrect, incomplete or produced in any manner tending to mislead or deceive a person.

D. The attorney general shall bring actions to recover civil penalties pursuant to this section in the superior court in the county in which the violation occurred or in a county where the agency has its office. All monies derived from civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

### 3-3491. Standards for oxygenated fuel; volatility; exceptions

A. From and after September 30 through March 31 of each year, in a county with a population of one million two hundred thousand or more persons and in any portion of a county contained in area A, blends of gasoline with ethanol shall not exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section. From and after September 30 through March 31 of each year, in area B, blends of gasoline with ethanol may exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section by up to one pound per square inch if the base fuel meets the requirements of ASTM D4814 and the final gasoline-ethanol blend contains at least six percent ethanol by volume but does not exceed United States environmental protection agency waivers. For any other locations and period of time, blends of gasoline with ethanol shall meet the volatility requirements as determined by division rule.

B. Notwithstanding subsection D of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by gasoline providers and that the director and the associate director determine will result in motor vehicle carbon monoxide emission reductions that will equal or exceed the reductions that result under subsection D of this section. In making those determinations, the director of the department of environmental quality and the associate director shall compare the alternative measure against the emission reduction that would be obtained from a fuel with the maximum vapor pressure standard prescribed by subsection D of this section and the minimum oxygen standard prescribed by section 3-3492 or 3-3495. Alternative fuel control measures approved by the associate director of the division in consultation with the director of the department of environmental quality may be used by any gasoline provider unless the approval is rescinded by the associate director of the division at least one hundred eighty days before the beginning of any oxygenate period in the future. Gasoline providers that choose to use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director not later than sixty days before the start of the oxygenate period.

C. From and after September 30 through March 31 of each year, all blends of gasoline with alcohol other than ethanol shall satisfy all of the requirements prescribed by section 3-3433 and rules adopted by the associate director under that section and the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

D. Notwithstanding subsection A of this section, if the director of the department of environmental quality has previously raised the minimum oxygen content to the maximum percentage of oxygen allowed for each oxygenate as provided by section 3-3495, the designated air quality planning agency for area B has considered, analyzed and reviewed the costs and benefits of all other reasonable and available control measures in lieu of reducing volatility requirements to nine pounds per square inch and the director of the department of environmental quality finds that area B has failed to maintain the carbon monoxide national ambient air quality standards by violating the standard, beginning with the oxygenate period beginning on the following September 30 and for each oxygenate period thereafter in area B, the volatility requirements described by section 3-3433, subsection G may be reduced to nine pounds per square inch. If a violation of the carbon monoxide national ambient air quality standards is recorded after the volatility requirements have been reduced to nine pounds per square inch, the director of the department of environmental quality shall remove the one pound per square inch waiver for gasoline-ethanol blends.

E. Gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within this state shall not contain the following:

1. Methyl tertiary butyl ether that exceeds 0.3 percent by volume.
2. A total of more than 0.10 percent oxygen by weight collectively from all of the following oxygenates:

- (a) Diisopropylether (DIPE).
- (b) Ethyl tert-butylether (ETBE).
- (c) Isopropanol.
- (d) Methanol.
- (e) N-butanol.
- (f) N-propanol.
- (g) Sec-butanol.
- (h) Tert-amylmethylether (TAME).
- (i) Tert-butanol.
- (j) Tert-pentanol (tert-amylalcohol).

F. Subsection E of this section does not prohibit the transshipment through this state, including storage incident to that transshipment, of gasoline that contains the oxygenates prescribed by subsection E of this section if both of the following apply:

1. The gasoline is used or disposed outside this state.
2. The gasoline is segregated from gasoline that is intended for use inside this state.

### 3-3493. Area A; fuel reformulation; rules

(L16, Ch. 232, sec. 27)

A. All gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.
2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.

B. For the period beginning November 1 through March 31 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 3-3433, subsections D and F. The fuel described in this subsection shall meet the requirements of section 3-3492, subsection A, paragraph 1.

C. Any registered supplier or oxygenate blender, as defined in division rules, may petition the associate director to request that all registered suppliers or oxygenate blenders be allowed to comply with standards other than the standards prescribed by section 3-3492, subsection A if the petitioner can demonstrate that ethanol supply shortages are imminent.

D. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.
2. Identify which oxygenate or oxygenates and the concentration that will be blended into gasoline for sale or use in area A.
3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half percent by weight oxygen content at reasonable cost, unless the registered supplier or oxygenate blender is petitioning to use a gasoline-ethanol blend containing less than ten percent by volume of

ethanol.

4. Specify a time period for compliance with any provision of section 3-3492, subsection A, not to exceed sixty days.

E. The associate director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the associate director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the associate director verifies that the basis for requesting the petition is factual.

F. The associate director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

G. The associate director of the division shall consult with the director of the department of environmental quality before granting, reauthorizing or denying any such petition.

H. The director of environmental quality in consultation with the associate director of the division shall adopt by rule:

1. Requirements to implement subsections A, B, C and D of this section.

2. Requirements for recordkeeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A, B, C and D of this section.

I. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

### 3-3493. Area A; fuel reformulation; rules

(L17, Ch. 295, sec. 2. Conditionally Eff.)

A. All gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.
2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.

B. For the period beginning November 1 through March 31 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 3-3433, subsections D and F. The fuel described in this subsection shall meet the requirements of section 3-3492, subsection A, paragraph 1 or 2.

C. Any registered supplier or oxygenate blender, as defined in division rules, may petition the associate director to request that all registered suppliers or oxygenate blenders be allowed to comply with standards other than the standards prescribed by section 3-3492, subsection A if the petitioner can demonstrate that ethanol supply shortages are imminent.

D. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.
2. Identify which oxygenate or oxygenates and the concentration that will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half percent by weight oxygen content at reasonable cost, unless the registered supplier or oxygenate blender is petitioning to use a gasoline-ethanol blend containing less than ten percent by volume of ethanol.
  4. Specify a time period for compliance with any provision of section 3-3492, subsection A, not to exceed sixty days.
- E. The associate director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the associate director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the associate director verifies that the basis for requesting the petition is factual.
- F. The associate director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.
- G. The associate director of the division shall consult with the director of the department of environmental quality before granting, reauthorizing or denying any such petition.
- H. The director of environmental quality in consultation with the associate director of the division shall adopt by rule:
1. Requirements to implement subsections A, B, C and D of this section.
  2. Requirements for recordkeeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A, B, C and D of this section.
- I. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

### 3-3494. Area C; fuel reformulation; rules

A. From and after May 31 through September 30 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in area C shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3434, subsection D.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3434, subsection D.

B. Any registered supplier or oxygenate blender, as defined in division rules, may petition the associate director to request that all registered suppliers or oxygenate blenders be allowed to supply gasoline in area C that does not meet the standards in subsection A of this section if the petitioner demonstrates that a shortage in the supply of gasoline meeting the standards in subsection A of this section is imminent.

C. A petition under subsection B of this section shall:

1. Identify specific supply conditions that will result in a shortage of gasoline meeting the standards in subsection A of this section.

2. Identify the formulation of gasoline that will be sold in area C in lieu of gasoline meeting the standards in subsection A of this section.

3. Specify a time period for compliance with the standards of subsection A of this section not to exceed sixty days.

D. The associate director shall either grant or deny a petition under subsection B of this section in writing within seven days of its receipt. Any decision by the associate director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the associate director verifies that the basis for requesting the petition is factual.

E. The associate director may reauthorize a petition granted under subsection B of this section if the petitioner demonstrates that the conditions identified in the petition have continued. The reauthorization of a petition shall not exceed thirty days.

F. The associate director of the division shall consult with the director of the department of environmental quality before granting, reauthorizing or denying any petition under subsection B of this section.

G. The associate director, in consultation with the director of the department of environmental quality, shall adopt by rule:

1. Requirements to implement subsections A, B and C of this section.

2. Requirements for recordkeeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsection A of this section.

H. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

3-3498. Inspections

A. On request, an interstate pipeline terminal or a motor fuel storage or dispensing site shall provide a product transfer document to the division. Product transfer documents may be stored off site as provided by division rule.

B. On request, a motor fuel storage or dispensing site shall provide access to motor fuel dispensing cabinets to the division for inspection of fuel dispensing meters and blending valves.

### 3-3512. Stage I vapor recovery systems; stage II vapor recovery systems

A. A person shall not offer for sale, sell, install or use a new gasoline stage I vapor recovery system, or any new or rebuilt component parts of the system, unless the system or component part has been certified by the California air resources board as of March 31, 2001 or after that date, or has been approved by a third party that is accredited to test equipment and recognized by industry and the division, and has not been rejected by the division. The division shall maintain and keep current a list of stage I vapor recovery systems and component parts that are approved by the division. Only those systems that are approved shall be used in this state. All certified vapor recovery components must be clearly identified by a permanent identification affixed by the certified manufacturer or rebuilder.

B. For gasoline dispensing sites with a throughput of over ten thousand gallons per month in area A or area B, a person shall not transfer or allow the transfer of gasoline into storage tanks at gasoline dispensing sites unless the storage tank is equipped with a stage I vapor recovery system consisting of a vapor-tight return line from the storage tank or its vent to the gasoline transport vehicle.

C. An owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site that is subject to stage I vapor recovery requirements shall comply with the following:

1. Install all necessary stage I vapor recovery systems and make any modifications necessary to comply with the requirements.
2. Provide adequate training and written instructions to the operator of the affected gasoline dispensing site and the gasoline transport vehicle.
3. Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I vapor recovery systems.
4. Connect and ensure proper operation of the stage I vapor recovery systems whenever gasoline is being loaded, unloaded or dispensed.
5. In area A and other geographical areas as provided by subsection G of this section, have the stage I vapor recovery system tested annually by a registered service representative that is licensed by the division.

D. Before the initial installation or modification of any stage I vapor recovery system, the owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site shall obtain a plan review and approval from the division. Application for the plan review and approval shall be on forms prescribed and provided by the division.

E. The division in consultation with the department of environmental quality and the office of the state fire marshal shall establish by rule standards for the installation and operation of stage I vapor recovery systems. The division shall establish by rule plan review and approval fees. In establishing those rules and standards, the associate director shall consider requirements in other states to ensure that only state-of-the-art technology is used.

F. Approval of a stage I vapor recovery system by the division does not relieve the owner or operator of the responsibility to comply with other applicable statutes, codes and rules pertaining to fire prevention, environmental quality and safety matters.

G. Any county, city or town outside of area A or area B may require gasoline dispensing sites with a throughput greater than ten thousand gallons per month to install, operate and maintain stage I vapor recovery systems in accordance with this section. Any county, city or town, including cities and towns within area B, also may require annual testing of required stage I vapor recovery systems pursuant to subsection C of this section. For a county,

city or town considering the adoption of a resolution to require stage I vapor recovery systems or annual testing within its jurisdiction and on request, the department of environmental quality shall provide technical assistance in evaluating the air quality in that county, city or town and shall provide final review and approval of an adopted resolution.

H. A county board of supervisors or governing body of a city or town shall submit a resolution approved by the department of environmental quality to the associate director of the division requesting the imposition of the requirements for stage I vapor recovery systems within its jurisdiction.

I. The associate director shall adopt, by rule, compliance schedules for gasoline dispensing sites located within the jurisdiction requesting stage I vapor recovery system requirements no later than twelve months after receipt of the resolution from the county board of supervisors or governing board of a city or town. All gasoline dispensing sites shall be required to comply with stage I vapor recovery system rules within twenty-four months after the rules have been filed with the secretary of state. Sites with stage I vapor recovery systems that are already installed must comply with the testing requirements at the time the rules become effective.

J. A county board of supervisors or governing body of a city or town that adopts the requirements for stage I vapor recovery systems may repeal those requirements by adopting a resolution to remove the imposition of those requirements within its jurisdiction unless the county, city or town is in an ozone nonattainment area that has since been designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. On receipt of the resolution, the associate director of the division shall consult with the director of the department of environmental quality to verify that a county, city or town is outside of an ozone nonattainment area designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. After consultation with the department of environmental quality, the associate director of the division shall revise the rules to repeal the requirements for stage I vapor recovery systems within that jurisdiction as soon as practicable.

K. From and after September 30, 2018, stage II vapor recovery systems that collect vapors during vehicle refueling are prohibited in an ozone nonattainment area designated as moderate, serious, severe or extreme by the United States environmental protection agency under section 107(d) of the clean air act or area A.

### 3-3513. Compliance schedules

Notwithstanding section 3-3512, subsection I relating to schedules of compliance:

1. Gasoline dispensing facilities located in area A or in any other geographical area as provided in section 3-3512, subsection G for which construction began after the certification of rules adopted pursuant to section 3-3512 shall be constructed to include stage I vapor recovery systems that meet the minimum standards set forth in this chapter and division rules.
2. All gasoline dispensing sites located in area A or in any other geographical area as provided in section 3-3512, subsection G that begin underground storage tank replacement and that apply for a permit pursuant to title 49, chapter 3, article 3 or 5 on or after September 30, 1992 shall be in compliance within six months after the effective date of the rules adopted pursuant to section 3-3512. Compliance with this article is a condition of the permit.

3-3514. Stage I rule effectiveness; enhanced enforcement

The associate director shall adopt rules to:

1. Enhance enforcement of the division's stage I vapor recovery program. The enforcement shall be enhanced through programs that may include increased frequency of or targeting of inspections, increased sampling frequency, use of portable analyzers or any other technique.
2. Establish standards and fees for required inspections of vapor recovery systems.

**DEPARTMENT OF ENVIRONMENTAL EQUALITY**

Title 18 Chapter 9

**Amend:** R18-9-A90



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** 10/21/2022

**SUBJECT:** DEPARTMENT OF ENVIRONMENTAL EQUALITY  
Title 18 Chapter 9,

**Amend:** R18-9-A903

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### **Summary:**

This regular rulemaking from the Arizona Department of Environmental Equality (Department) seeks to amend one (1) rule in Title 18 Chapter 9, Article 9, R18-9-A903 related to Prohibitions. Under the Federal Clean Water Act, Arizona created the Arizona Pollution Discharge Elimination System (AZPDES), that regulates the discharge of pollutants into surface waters considered to be Waters of the United States (WOTUS). HB2691 directs the Department to create a Surface Water Protection Program (SWPP) for waters not designated as WOTUS so they can receive similar protections. The amendment to R18-9-A903 allows for the regulation of discharge of pollutants into non-WOTUS surface waters.

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

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

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

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

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

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

4. **Summary of the agency's economic impact analysis:**

The Department indicates that HB2691 (2021) directs ADEQ to develop the Surface Water Protection Program (SWPP) and establish a variety of regulations by December 31, 2022. The Department further states that this rulemaking modifies Title 18, Chapter 9, Article 9, which contains regulations for the permitting program. Large portions of the permitting provisions in HB2691 are self-executing. In addition, the Department does not intend to meaningfully modify the Arizona Pollution Discharge Elimination System (AZPDES) permitting program in this initial SWPP rulemaking, although the need to do so may arise in later rulemakings. The rulemaking contains amendments made by ADEQ to 18 A.A.C.9, Article 9, in order to adopt and revise Surface Water Quality Standards (WQS) within the State of Arizona

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states they have developed the proposed WQS to comply with federal and state law, and to avoid federally promulgated WQS. The Department further states that water quality criteria must be based on sound scientific rationale to protect the designated use, and not economic considerations. ADEQ is not aware of any less intrusive or less costly alternative methods that would meet ADEQ's legal obligations.

6. **What are the economic impacts on stakeholders?**

The Department indicates this rulemaking could affect ADEQ, political subdivisions, public and private entities who wish to obtain an AZPDES permit for discharge to a listed surface water, public and private entities who may need to operate under an AZPDES general permit, and public and private laboratories that test for permit compliance. The Department believes the rulemaking will create health, social, and economic benefits to the general public from access to clean water and protection of fish and wildlife.

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

The Department indicates that it modified this rule during the notice and comment process to provide additional clarity on the restrictions that must be present in any AZPDES permit for a discharge to a non-WOTUS protected surface water. Council staff does not believe this change constitutes a substantially different rule pursuant to A.R.S. § 41-1025.

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

The Department indicates that it received commentary asking for change in the language to clarify potential permitting actions. The Department made these revisions as outlined in subsection 7 of this memo.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that their regulations allow for many facilities to qualify for general permit, however those that do not qualify may be required to apply for an individual AZPDES permit.

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

The Department indicates that this rulemaking is not more stringent than federal law, but that they may apply to waters not protected under federal law.

**11. Conclusion**

This regular rulemaking from the Arizona Department of Environmental Quality seeks to amend one (1) rule in Title 18 Chapter 9, Article 9, R18-9-A903 related to Prohibitions. The Department indicates this rule is being updated to provide surface water protections for non-WOTUS waters in Arizona as directed by HB2691. The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

October 18, 2022

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, #305  
Phoenix, AZ 85007

Re: Rulemaking for Title 18. Environmental Quality, Chapter 11. Department of Environmental Quality - Water Quality Standards, Article 1 and Article 2; Title 18. Environmental Quality, Chapter 9. Department of Environmental Quality - Water Pollution Control, Article 9.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits two (2) Notices of Final Rulemaking to the Governor's Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for December 6, 2022. This rulemaking implements the new Arizona Surface Water Protection Program.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

#### I. Information Required by A.A.C. R1-6-201(A)

- a. The public record closed for all rules on October 17, 2022 at 11:59 p.m.
- b. The rulemaking activity does not relate to a five-year review report.
- c. The rulemaking activity does not establish a new fee; please see A.R.S. § 49-203(A)(9) for authority.
- d. An immediate effective date is not requested.
- e. The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- g. There will be no new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S. § 41-1055(B)(3)(a).

- h. A list of documents enclosed under A.A.C. R1-6-201(A)(2) through (8), which are enclosed as electronic copies:
1. This cover letter.
  2. Two Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule. The preambles contain:
    - a. an economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
    - b. comments received by the agency, both written and oral, concerning the proposed rule;
    - c. the general and specific statutes authorizing the rule, including relevant statutory definitions;
  3. No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
  4. No material is incorporated by reference in this rulemaking;
  5. A list of statutes or other rules referred to in the definitions.

Thank you for your timely review and approval. Please contact Jonathan Quinsey, Legal Specialist, Water Quality Division, 602-771-8193 or [quinsey.jonathan@azdeq.gov](mailto:quinsey.jonathan@azdeq.gov), if you have any questions.

Sincerely,  
**DocuSigned by:**



Misael Cabrera, P.E.  
D75AE75569754AE...  
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. Environmental quality

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - water pollution control

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)**      **Rulemaking Action**  
Article 9, R18-9-A903      Amend
  
2. **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
  
Authorizing statute:      A.R.S. §§49-202(A), 49-203(A)(1)  
  
Implementing statute:      A.R.S. §§ 49-221, 49-222
  
3. **The effective date of the rule:**
  - a. **If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
  
  - b. **If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
  
4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**  
  
Notice of Rulemaking Docket Opening: 28 A.A.R. 124, January 7, 2022  
  
Notice of Proposed Rulemaking: 28 A.A.R. 2327, September 16, 2022
  
5. **The agency’s contact person who can answer questions about the rulemaking:**  
  
Name:      Jonathan Quinsey  
  
Address:      Department of Environmental Quality  
  
1110 W. Washington St.  
  
Phoenix, AZ 85007

Telephone: (602) 771-8193  
Email: Quinsey.Jonathan@azdeq.gov or PSWL@azdeq.gov  
Website: <http://www.azdeq.gov/swpp>

**6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

***Background***

Historically, a broad spectrum of Arizona’s lakes, ponds, streams and wetlands have been protected under the Federal Clean Water Act (CWA). This protection includes the regulation of discharges of pollutants to surface waters via the Arizona Pollution Discharge Elimination System (AZPDES). This regulatory program has only been implemented to regulate discharges into “waters of the United States” (WOTUS).

The CWA does not define WOTUS, instead, it provides discretion for the U.S. Environmental Protection Agency (EPA) and the US Army Corps of Engineers (USACE) to define WOTUS in their rules. Courts have heard a number of cases and issued rulings that effectively modify the extent of federal jurisdiction and different Federal administrations have attempted to change the definition as well. The Arizona Department of Environmental Quality (ADEQ) created the Surface Water Protection Program (SWPP) to provide clear and consistent regulation for stakeholders despite these changes to the jurisdictional reach of the Federal CWA. The SWPP is the result of a rigorous public process that has resulted in this effort to create a radically simple but effective approach to protect important state waters that are not WOTUS and therefore would not receive the protections of a WOTUS.

HB2691 (2021) directs ADEQ to develop the SWPP and establish a variety of regulations by December 31, 2022. ADEQ is meeting that goal in this publication of the register by amending the proposed Title 18, Chapter 11, Article 2 titled “Water Quality Standards for Non-WOTUS Protected Surface Waters.” This specific rulemaking modifies Title 18, Chapter 9, Article 9 which contains the regulations for the permitting program.

***Permitting***

This proposed rulemaking includes modifications to A.A.C. Title 18, Chapter 9, Article 9. Large portions of the permitting provisions in HB2691 are intentionally self-executing. ADEQ does not intend to meaningfully

modify the AZPDES permitting program in this initial SWPP rulemaking, although the need to do so may arise in later rulemakings.

There are currently no permitted discharges to non-WOTUS protected surface waters. The cost of building a separate permitting program will issue no permits in this initial adoption is prohibitive as ADEQ would not see environmental benefits from adopting entirely separate provisions nor would the agency reduce permitting costs.

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

None.

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

Not applicable.

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

**A. An identification of this rulemaking:**

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) contains amendments made by ADEQ to 18 A.A.C. 9, Article 9, in order to adopt and revise Surface Water Quality Standards (WQS) within the State of Arizona. Additionally, this EIS addresses the adoption of 18 A.A.C 11, Article 2, which adopts WQS for non-WOTUS protected surface waters listed on the Protected Surface Waters List. The WQS in Article 2 do not apply generally, and may only be applied to listed surface waters.

**B. A brief summary of the EIS:**

Interested stakeholders should review ADEQ's Social, Environmental, and Economic cost/benefit analysis technical paper at [azdeq.gov/node/8173](http://azdeq.gov/node/8173) for more in-depth information. ADEQ's contractors have drafted the paper to meet the requirements statutory EIS requirements. Additionally, ADEQ has also addressed this topic earlier in the preamble and provided specific information regarding the costs and benefits of this proposed rule. The three case-study waterbodies ADEQ has used to in this rulemaking provide a contrasting and otherwise informative set of examples by which to illustrate various aspects of the economic impact of this rule.

McClure’s quantitative analysis based on the data available for various cost and benefit factors incorporates a framework for addressing additional, qualitative aspects of protecting Arizona waterbodies. These qualitative components add context to the quantified portion of ADEQ’s analysis and reflect potential elements of the cost/benefit analysis that could be refined during formal rulemaking. Including these qualitative discussions also helps illustrate certain limitations in the current modeling process.

The quantitative elements synthesize the following types of information:

1. Key characteristics of the three case-study waterbodies for which the cost/benefit process will be performed and which influence the application of various cost and benefit factors.
2. Quantified cost and benefit factors to apply to the waterbodies and to the households in the two types of analysis areas.
3. Factors for updating cost and benefit estimates derived (by others) in preceding years and for discounting streams of costs and benefits estimated to occur over a subsequent 20-year period.
4. Cost and benefit totals for each waterbody, and the ratio of benefits to costs.

Qualitative aspects of the analysis are summarized in the contractor report through a series of tables that discuss the broad implications of additional benefit and cost categories not quantified in the current model, Environmental Justice observations based on the quantified demographic data, and the sensitivity of model results to various quantified variables, including how results compared to certain Arizona-specific cost and benefit estimates in the EPA document.

**C. Identification of the person who will be directly affected by, bear the costs of, or directly benefit from the rules:**

The table below summarizes the persons who will be directly affected by, bear the costs of, or directly benefit from the rules in a manner consistent with the requirements of the EIS statute. Although the analysis completed by the consultant is more complete, this section may serve as a more accessible summary.

This rulemaking could affect ADEQ, political subdivisions, public and private entities who wish to obtain an AZPDES permit for a discharge to a listed surface water, public and private entities who may need to operate under and AZPDES general permit, and public and private laboratories that test for permit compliance. It will also create health, social, and economic benefits to the general public from access to clean water and protection of fish and wildlife.

The AZPDES permitting program is implemented by ADEQ through various general and individual permits. Individual permit holders can include public and private WWTPs, publicly owned treatment works (POTW), fish hatcheries, power plants, mines, truck stops, drinking water plants, marinas, and Water Quality Assurance Revolving Fund (WQARF) remediation projects. Because the WQS adopted in Article 1 of this rulemaking are already in effect, and there are planned of current discharges to any waters listed in Article 2, ADEQ expects the costs of adopting this rulemaking to be extremely low. Nonetheless, based on the information above, ADEQ has identified the following list of potential affected parties:

*State and local government agencies*

ADEQ,  
Agencies operating under individual or general AZPDES permits

*Political subdivisions*

Political subdivisions generally, public WWTPs, POTWs, public laboratories Non-WWTP government entities operating under AZPDES individual permits Non-WWTP government entities operating under AZPDES general permits

*Privately-Owned Businesses*

Private entities operating under general permits Private, non-WWTP individual permit holders  
Private WWTPs  
Private laboratories

*The General Public*

**D. Cost/Benefit analysis:**

The costs/benefits for each of these potentially affected parties is listed below. Use the following key to decipher the range of costs:

<b>Minimal</b>	<b>Moderate</b>	<b>Substantial</b>	<b>Significant</b>
\$10,000 or less	\$10,001 to \$1,000,000	\$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.

<b>Description of Affected Groups</b>	<b>Description of Effect</b>	<b>Increased Cost/ Decreased Revenue</b>	<b>Decreased Cost/ Increased Revenue</b>
ADEQ	Possible increase in number of surface waters identified as impaired and corresponding changes in 303(d) listings and TMDLs.	Minimal	
	Improved implementation and enforcement of the SWQS	Minimal	

	Administrative costs associated with future rulemakings	Significant	
	Predictability, reduced transaction costs, and responsiveness to stakeholders from avoiding federally-promulgated SWQS.		Minimal
	Compliance with state and federal law.		Minimal
	Support of ADEQ's mission to protect and enhance public health and the environment.		Substantial
Political subdivisions generally	Tax revenues and indirect benefits of clean water dependent industries (including outdoor recreation, tourism, etc.)		Cumulatively substantial
Public WWTP and/or POTW	Increased monitoring costs	Minimal	
	Evaluation of compliance with standards	Minimal	
	Cost of compliance with new WQS	Minimal	
	Improved implementation and enforcement of water quality standards by political subdivisions with pretreatment programs.		
	Clarification and correction of errors.		Moderate
Public laboratories	Testing for WQS with accompanying costs.	Minimal	
Non-WWTP Government entities	Clarification and correction of errors.		Significant
	Cost of compliance with new WQS.	Minimal	
Private entities operating under general permits	Clarification and correction of errors.		Significant
	Cost of compliance with new SWQS.	Minimal	
Private WWTP	Clarification and correction of errors.		Significant
	Cost of compliance with new SWQS		
Laboratories	Clarification and correction of errors.		Significant
	Testing for new SWQS with accompanying costs.	Minimal	
General Public	Economic and social benefits of clean water		Cumulatively substantial
Non-WWTP individual permit holders (Power Plants, Mines, Marinas, etc.)	Clarification and correction of errors.		Significant
	Cost of compliance with new SWQS.	Minimal, if any	

**E. A general description of the probable impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:**

ADEQ estimates that this rulemaking will not have an impact on public or private employment. To the best of ADEQ's knowledge, the agency does not believe that any of the rule contained in this rulemaking package will result in a private or public entity needed an AZPDES permit.

**F. A statement of the probable impact of the rules on small business:**

The agency uses the term "small business" consistent with A.R.S. § 41-1001(21) which defines a "small business" as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

**1. An identification of the small business subject to the rules.**

Among the stakeholders listed above, many could meet the A.R.S. § 41-1001(21) definition of small business. For example, a WWTP that would potentially discharge to a non-WOTUS protected surface water could be affected by this rule. In its current form, ADEQ cannot identify any small businesses that will be negatively affected by this rulemaking. Conversely, some small businesses may see some benefit in the clarification of WOTUS status of some waters and a clarification of what standards apply to those waters. Some recreational tourism related group may also see benefits from this rulemaking.

**2. The administrative and other costs required for compliance with the rules:**

Any potential compliance costs associated with this rulemaking would vary based on the stakeholder involved. ADEQ's examination of those costs is addressed in the matrix above and the consultants report.

**3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035.**

In the event that a small business must acquire an AZPDES permit for a discharge to a non-WOTUS protected surface water, ADEQ has adopted water quality standards that allow ADEQ to establish variances, site-specific standards, or account for natural background pollutants when designing the permit.

**4. The probable costs and benefits to private persons and consumers who are directly affected by the rules:**

ADEQ's economic consultants prepared an executive summary which address the probable costs/benefits of and individual affected by these rules.

**G. A statement of the probable effect on state revenues.**

This rule should have a de minimus effect on state revenues.

**H. A description of any less instructive or less costly alternative methods of achieving the purpose of this rulemaking:**

ADEQ continually reviews and revises its WQS. These standards are adopted to protect public health or welfare and enhance the quality of water in the state. This means that WQS should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water

and take into consideration the use and value of water for public water supplies, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.

EPA will review ADEQ's Article 1 WQS to determine if they are consistent with the requirements of the CWA. If EPA determines that ADEQ's SWQS do not meet the requirements of the CWA, EPA will disapprove ADEQ's SWQS and promulgate federal standards. ADEQ has, therefore, developed the proposed WQS to comply with federal and state law, and to avoid federally promulgated WQS. Additionally, water quality criteria must be based on sound scientific rationale to protect the designated use, and not economic considerations. ADEQ is not aware of any less intrusive or less costly alternative methods that would meet ADEQ's legal obligations.

**I. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

ADEQ recommends that interested stakeholder review ADEQ's Arizona Water Quality Standards technical paper for additional information about how data for calculating water quality standards is obtained. The paper can be accessed here: [https://static.azdeq.gov/wqd/swpp/wqs\\_tp.pdf](https://static.azdeq.gov/wqd/swpp/wqs_tp.pdf).

For information regarding ADEQ's economic analysis, ADEQ recommends that interested stakeholder review the consultant's final report and ADEQ's technical paper describing it. ADEQ's technical paper is available here: [https://static.azdeq.gov/wqd/swpp/ese\\_tp.pdf](https://static.azdeq.gov/wqd/swpp/ese_tp.pdf) and a copy of the consultant report is available here: [https://static.azdeq.gov/wqd/swpp/ese\\_report.pdf](https://static.azdeq.gov/wqd/swpp/ese_report.pdf).

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

ADEQ has modified this rule during the notice and comment process to provide additional clarity on the restrictions that must be present in any AZPDES permit for a discharge to a non-WOTUS protected surface water.

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

During this rulemaking commentors asked for a change in language that would provide more clarity about potential permitting actions. Specifically, a comment stating the following was received:

*"Because ADEQ intends to utilize the existing AZPDES permit program (with some changes mandated by statute) to develop and issue point source discharge permits for discharges to non-WOTUS protected surface waters, the Department has not proposed new permitting regulations. Instead, it has proposed modifying A.A.C. R18-9-A903 to add language stating that AZPDES permits for discharges to non-WOTUS protected surface*

waters should not include conditions that violate the restrictions of A.R.S. § 49-255.04.

*[Stakeholder] supports the intention of this change, but believes additional clarity is required regarding the scope of AZPDES permits for discharges to non-WOTUS protected surface waters. Specifically, some of the prohibitions listed in A.A.C. R18-9-A903 may not “violate the restrictions of” A.R.S. § 49-255.04, but they nevertheless are not appropriate for consideration when issuing an AZPDES permit for a discharge to a non-WOTUS protected surface water. Yet, as the language is proposed, it is possible that some of these prohibitions could be applied when issuing permits for discharges to non-WOTUS protected surface waters.”*

**ADEQ Response:** ADEQ has modified the language in this rulemaking to address the stakeholder's concerns.

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

None.

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

ADEQ’s regulations do allow for general permits for many different types of facilities, but not all facilities qualify for general permits. In the case that a general permit does not apply this rule may require that entities that discharge to non-WOTUS protected surface water apply for an individual AZPDES permit. Requirements for discharge vary depending on the facility, so many of these discharges would not be able to receive coverage under a general permit.

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

The Clean Water Act and implementing regulations adopted by EPA apply to the subject of this rule, as described in Section 5 above. Article 2 of this rulemaking establishes water quality standards that are applicable to surface waters that are not protected under the Clean Water Act. These standards are not more stringent than those the standards implemented by federal law, but they apply to waters that may not be protected under federal law.

ADEQ was given explicit statutory authority to develop a program to protect these surface waters by HB2691(2021). That bill is codified at A.R.S. §§ 49-202.01, 49-221, 49-255.04, and 49-255.05.

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

No such analysis was submitted.

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

No such material shall be incorporated by reference.

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

Not applicable.

**15. The full text of the rules follows:**

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY – WATER POLLUTION CONTROL**

**ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**PART A. GENERAL REQUIREMENTS**

Section  
R18-9-A903. Prohibitions

**ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**PART A. GENERAL REQUIRMENTS**

**R18-9-A903. Prohibitions**

A. The Director shall not issue a permit for a discharge to a WOTUS:

1. If the conditions of the permit do not provide for compliance with the applicable requirements of A.R.S. Title 49, Chapter 2, Article 3.1; 18 A.A.C. 9, Articles 9 and 10; and the Clean Water Act;
2. Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C);
3. If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe, or a federally promulgated water quality standard under 40 CFR 131.31;
4. If in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable water;
5. For the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste;
6. For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act (33 U.S.C. 1288); and
7. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of a water quality standard. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required under R18-9-A905(A)(8), and for which the Department has

performed a wasteload allocation for the proposed discharge, shall demonstrate before the close of the public comment period that:

- a. There are sufficient remaining wasteload allocations to allow for the discharge, and
- b. The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with water quality standards.

B. The Director shall not issue a permit for a discharge to a non-WOTUS protected surface water:

1. If the permit or the conditions of the permit violate the restrictions listed in A.R.S. §49-255.04; and
2. If the conditions of the permit do not provide for compliance with 18 A.A.C. 11, Article 2 and the applicable requirements of 18 A.A.C. 9, Article 9.

### **§ R18-9-A903. Prohibitions**

The Director shall not issue a permit:

1. If the conditions of the permit do not provide for compliance with the applicable requirements of A.R.S. Title 49, Chapter 2, Article 3.1; 18 A.A.C. 9, Articles 9 and 10; and the Clean Water Act;
2. Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C);
3. If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe, or a federally promulgated water quality standard under 40 CFR 131.31;
4. If in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable water;
5. For the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste;
6. For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act (33 U.S.C. 1288); and
7. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of a water quality standard. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required under R18-9-A905(A)(8), and for which the Department has performed a wasteload allocation for the proposed discharge, shall demonstrate before the close of the public comment period that:
  - a. There are sufficient remaining wasteload allocations to allow for the discharge, and
  - b. The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with water quality standards.

### **History:**

**Ariz. Admin. Code R18-9-A903 Prohibitions (Arizona  
Administrative Code (2022 Edition))**

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New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2).

~~groundwater permits; technical correction~~  
(now: ADEQ; water quality program; WOTUS)

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

**CHAPTER 325**  
**HOUSE BILL 2691**

AN ACT

AMENDING SECTIONS 49-175, 49-201, 49-202, 49-202.01, 49-203, 49-210, 49-221, 49-222, 49-225, 49-231, 49-232, 49-233, 49-234, 49-242, 49-245.01, 49-245.02, 49-250, 49-255, 49-255.01, 49-255.02 AND 49-255.03, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 3.1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-255.04 AND 49-255.05; AMENDING SECTIONS 49-256, 49-256.01, 49-256.02, 49-261, 49-262, 49-371, 49-391 AND 49-701, ARIZONA REVISED STATUTES; RELATING TO WATER QUALITY CONTROL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 49-175, Arizona Revised Statutes, is amended to  
3 read:

4 49-175. Work plans

5 A. A work plan to address a release of a contaminant to the  
6 environment shall include the following:

7 1. A summary of existing information on site characterization,  
8 including references to known site characterization and assessment  
9 information and information regarding any remediation previously conducted  
10 at the site or portion of the site. The applicant shall provide copies of  
11 the referenced reports to the department.

12 2. If the site or portion of the site addressed in the application  
13 has not been characterized, a plan to conduct site characterization and a  
14 schedule for completion. The applicant shall provide a schedule for the  
15 submission of a work plan for remediation following approval of site  
16 characterization.

17 3. If site characterization is completed for the site or portion of  
18 the site addressed in the application, a plan for remediation which will  
19 comply with subsection B of this section and a schedule for completion as  
20 follows:

21 (a) The work plan shall describe how the remediation will comply  
22 with subsection B of this section and how the completion of remediation  
23 will be verified. The applicant and the department may agree on interim  
24 performance goals. The interim performance goals shall be guidelines used  
25 to determine the ongoing effectiveness of the remediation toward reaching  
26 the final remediation levels.

27 (b) The work plan may provide for the remediation to be conducted  
28 in phases or tasks that, if agreed to by the applicant, provide for the  
29 department to review and approve a completed phase or task before  
30 initiation of the next phase or task of the work plan.

31 4. A schedule for submission of progress reports to the department.  
32 The progress reports shall be sufficient to allow the department to  
33 determine the effectiveness of the characterization if it has not been  
34 completed, followed by the remediation.

35 5. A proposal for community involvement as prescribed by section  
36 49-176.

37 6. If known, a list of institutional or engineering controls  
38 necessary during remediation and after completion of the proposed  
39 remediation to control exposure to contaminants.

40 7. A proposal for monitoring of a site or portion of a site during  
41 the remediation and after the remediation if necessary to verify whether  
42 the approved remediation levels or controls have been attained and will be  
43 maintained.

1           8. A list of any permits or legal requirements known by the  
2 applicant to apply to the work to be performed or already performed by the  
3 applicant.

4           9. If requested by the department, information regarding the  
5 financial capability of the applicant to conduct the work identified in  
6 the application.

7           B. Remediation levels or controls for remediation conducted  
8 pursuant to this article shall be established in accordance with rules  
9 adopted pursuant to section 49-282.06 unless one or more of the following  
10 ~~applies~~ APPLY:

11           1. The applicant demonstrates that remediation levels,  
12 institutional controls or engineering controls for remediation of  
13 contaminated soil comply with section 49-152 and the rules adopted  
14 pursuant to that section.

15           2. The applicant demonstrates that remediation levels,  
16 institutional controls or engineering controls for remediation of  
17 landfills or other facilities that contain materials that are not subject  
18 to section 49-152 and the rules adopted pursuant to that section will  
19 result in a condition that does not exceed a cumulative excess lifetime  
20 cancer risk between  $1 \times 10^{-4}$  and  $1 \times 10^{-6}$ , and a hazard index no greater  
21 than 1. The excess lifetime cancer risk shall be selected based on site-  
22 specific factors, including the presence of multiple contaminants, the  
23 existence of multiple pathways of exposure, the uncertainty of exposure  
24 and the sensitivity of the exposed population. Approval of the use of  
25 institutional or engineering controls shall require a demonstration that  
26 the controls will be maintained and that the requirements of section  
27 49-158 have been met.

28           3. The applicant demonstrates that on achieving remediation levels  
29 or controls for a source or potential source of contamination to a  
30 ~~navigable water~~ WOTUS, the source of contamination will not cause or  
31 contribute to an exceedance of surface water quality standards, or if a  
32 permit is required pursuant to 33 United States Code section 1342 for any  
33 discharge from the source, that any discharges from the source will comply  
34 with the permit. Approval of the use of institutional or engineering  
35 controls shall require a demonstration that the controls will be  
36 maintained and that the requirements of section 49-158 have been met.

37           4. The applicant demonstrates that, on achieving remediation levels  
38 or controls for a source of contamination to an aquifer, the source will  
39 not cause or contribute to an exceedance of aquifer water quality  
40 standards beyond the boundary of the facility where the source is located.  
41 In determining whether remediation levels or controls satisfy this  
42 requirement, the department shall consider a demonstration by the  
43 applicant that aquifer water quality standards are exceeded beyond the  
44 boundary of the facility due to naturally occurring contamination or from  
45 sources outside of the boundary. The applicant is not required to

1 identify or evaluate other sources. Approval of the use of institutional  
2 or engineering controls shall require a demonstration that the controls  
3 will be maintained and that the requirements of section 49-158 have been  
4 met.

5 C. The department, at its sole discretion, may waive any work plan  
6 requirement under this section that it determines to be unnecessary to  
7 make any of the determinations required under section 49-177. Decisions  
8 under this subsection are not subject to appeal or dispute resolution  
9 under section 49-185.

10 Sec. 2. Section 49-201, Arizona Revised Statutes, is amended to  
11 read:

12 49-201. Definitions

13 In this chapter, unless the context otherwise requires:

14 1. "Administrator" means the administrator of the United States  
15 environmental protection agency.

16 2. "Aquifer" means a geologic unit that contains sufficient  
17 saturated permeable material to yield usable quantities of water to a well  
18 or spring.

19 3. "Best management practices" means those methods, measures or  
20 practices to prevent or reduce discharges and includes structural and  
21 nonstructural controls and operation and maintenance procedures. Best  
22 management practices may be applied before, during and after discharges to  
23 reduce or eliminate the introduction of pollutants into receiving waters.  
24 Economic, institutional and technical factors shall be considered in  
25 developing best management practices.

26 4. "CERCLA" means the comprehensive environmental response,  
27 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.  
28 2767; 42 United States Code sections 9601 through 9657), commonly known as  
29 "superfund".

30 5. "Clean closure" means implementation of all actions specified in  
31 an aquifer protection permit, if any, as closure requirements, as well as  
32 elimination, to the greatest degree practicable, of any reasonable  
33 probability of further discharge from the facility and of either exceeding  
34 aquifer water quality standards at the applicable point of compliance or,  
35 if an aquifer water quality standard is exceeded at the time the permit is  
36 issued, causing further degradation of the aquifer at the applicable point  
37 of compliance as provided in section 49-243, subsection B, paragraph 3.  
38 Clean closure also means postclosure monitoring and maintenance are  
39 unnecessary to meet the requirements in an aquifer protection permit.

40 6. "Clean water act" means the federal water pollution control act  
41 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code  
42 sections 1251 through 1376), as amended.

43 7. "Closed facility" means:

44 (a) A facility that ceased operation before January 1, 1986, that  
45 is not, on August 13, 1986, engaged in the activity for which the facility

1 was designed and that was previously operated and for which there is no  
2 intent to resume operation.

3 (b) A facility that has been approved as a clean closure by the  
4 director.

5 (c) A facility at which any postclosure monitoring and maintenance  
6 plan, notifications and approvals required in a permit have been  
7 completed.

8 8. "Concentrated animal feeding operation" means an animal feeding  
9 operation that meets the criteria prescribed in 40 Code of Federal  
10 Regulations part 122, appendix B for determining a concentrated animal  
11 feeding operation for purposes of 40 Code of Federal Regulations sections  
12 122.23 and 122.24, appendix C.

13 9. "Department" means the department of environmental quality.

14 10. "Direct reuse" means the beneficial use of reclaimed water for  
15 specific purposes authorized pursuant to section 49-203, subsection A,  
16 paragraph ~~6~~ 7.

17 11. "Director" means the director of environmental quality or the  
18 director's designee.

19 12. "Discharge" means the direct or indirect addition of any  
20 pollutant to the waters of the state from a facility. For purposes of the  
21 aquifer protection permit program prescribed by article 3 of this chapter,  
22 discharge means the addition of a pollutant from a facility either  
23 directly to an aquifer or to the land surface or the vadose zone in such a  
24 manner that there is a reasonable probability that the pollutant will  
25 reach an aquifer.

26 13. "Discharge impact area" means the potential areal extent of  
27 pollutant migration, as projected on the land surface, as the result of a  
28 discharge from a facility.

29 14. "Discharge limitation" means any restriction, prohibition,  
30 limitation or criteria established by the director, through a rule, permit  
31 or order, on quantities, rates, concentrations, combinations, toxicity and  
32 characteristics of pollutants.

33 15. "EFFLUENT-DEPENDENT WATER" MEANS A SURFACE WATER OR PORTION OF A  
34 SURFACE WATER THAT CONSISTS OF A POINT SOURCE DISCHARGE WITHOUT WHICH THE  
35 SURFACE WATER WOULD BE EPHEMERAL. AN EFFLUENT-DEPENDENT WATER MAY BE  
36 PERENNIAL OR INTERMITTENT DEPENDING ON THE VOLUME AND FREQUENCY OF THE  
37 POINT SOURCE DISCHARGE OF TREATED WASTEWATER.

38 ~~15:~~ 16. "Environment" means ~~navigable waters~~ WOTUS, any other  
39 surface waters, groundwater, drinking water supply, land surface or  
40 subsurface strata or ambient air, within or bordering on this state.

41 17. "EPHEMERAL WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE  
42 WATER THAT FLOWS OR POOLS ONLY IN DIRECT RESPONSE TO PRECIPITATION.

43 ~~16:~~ 18. "Existing facility" means a facility on which construction  
44 began before August 13, 1986 and ~~which~~ THAT is neither a new facility nor

1 a closed facility. For the purposes of this definition, construction on a  
2 facility has begun if the facility owner or operator has either:

3 (a) Begun, or caused to begin, as part of a continuous on-site  
4 construction program any placement, assembly or installation of a  
5 building, structure or equipment.

6 (b) Entered a binding contractual obligation to purchase a  
7 building, structure or equipment ~~which~~ THAT is intended to be used in its  
8 operation within a reasonable time. Options to purchase or contracts  
9 ~~which~~ THAT can be terminated or modified without substantial loss, and  
10 contracts for feasibility engineering and design studies, do not  
11 constitute a contractual obligation for purposes of this definition.

12 ~~17.~~ 19. "Facility" means any land, building, installation,  
13 structure, equipment, device, conveyance, area, source, activity or  
14 practice from which there is, or with reasonable probability may be, a  
15 discharge.

16 ~~18.~~ 20. "Gray water" means wastewater that has been collected  
17 separately from a sewage flow and that originates from a clothes washer or  
18 a bathroom tub, shower or sink but that does not include wastewater from a  
19 kitchen sink, dishwasher or toilet.

20 ~~19.~~ 21. "Hazardous substance" means:

21 (a) Any substance designated pursuant to sections 311(b)(2)(A) and  
22 307(a) of the clean water act.

23 (b) Any element, compound, mixture, solution or substance  
24 designated pursuant to section 102 of CERCLA.

25 (c) Any hazardous waste having the characteristics identified under  
26 or listed pursuant to section 49-922.

27 (d) Any hazardous air pollutant listed under section 112 of the  
28 federal clean air act (42 United States Code section 7412).

29 (e) Any imminently hazardous chemical substance or mixture with  
30 respect to which the administrator has taken action pursuant to section 7  
31 of the federal toxic substances control act (15 United States Code section  
32 2606).

33 (f) Any substance ~~which~~ THAT the director, by rule, either  
34 designates as a hazardous substance following the designation of the  
35 substance by the administrator under the authority described in  
36 subdivisions (a) through (e) of this paragraph or designates as a  
37 hazardous substance on the basis of a determination that such substance  
38 represents an imminent and substantial endangerment to public health.

39 ~~20.~~ 22. "Inert material" means broken concrete, asphaltic pavement,  
40 manufactured asbestos-containing products, brick, rock, gravel, sand and  
41 soil. Inert material also includes material that when subjected to a  
42 water leach test that is designed to approximate natural infiltrating  
43 waters will not leach substances in concentrations that exceed numeric  
44 aquifer water quality standards established pursuant to section 49-223,  
45 including overburden and wall rock that is not acid generating, taking

1 into consideration acid neutralization potential, and that has not and  
2 will not be subject to mine leaching operations.

3 23. "INTERMITTENT WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE  
4 WATER THAT FLOWS CONTINUOUSLY DURING CERTAIN TIMES OF THE YEAR AND MORE  
5 THAN IN DIRECT RESPONSE TO PRECIPITATION, SUCH AS WHEN IT RECEIVES WATER  
6 FROM A SPRING, ELEVATED GROUNDWATER TABLE OR ANOTHER SURFACE SOURCE, SUCH  
7 AS MELTING SNOWPACK.

8 ~~21.~~ 24. "Major modification" means a physical change in an existing  
9 facility or a change in its method of operation that results in a  
10 significant increase or adverse alteration in the characteristics or  
11 volume of the pollutants discharged, or the addition of a process or major  
12 piece of production equipment, building or structure that is physically  
13 separated from the existing operation and that causes a discharge,  
14 provided that:

15 (a) A modification to a groundwater protection permit facility as  
16 defined in section 49-241.01, subsection C that would qualify for an  
17 area-wide permit pursuant to section 49-243 consisting of an activity or  
18 structure listed in section 49-241, subsection B shall not constitute a  
19 major modification solely because of that listing.

20 (b) For a groundwater protection permit facility as defined in  
21 section 49-241.01, subsection C, a physical expansion that is accomplished  
22 by lateral accretion or upward expansion within the pollutant management  
23 area of the existing facility or group of facilities shall not constitute  
24 a major modification if the accretion or expansion is accomplished through  
25 sound engineering practice in a manner compatible with existing facility  
26 design, taking into account safety, stability and risk of environmental  
27 release. For a facility described in section 49-241.01, subsection C,  
28 paragraph 1, expansion of a facility shall conform with the terms and  
29 conditions of the applicable permit. For a facility described in section  
30 49-241.01, subsection C, paragraph 2, if the area of the contemplated  
31 expansion is not identified in the notice of disposal, the owner or  
32 operator of the facility shall submit to the director the information  
33 required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

34 ~~22. "Navigable waters" means the waters of the United States as~~  
35 ~~defined by section 502(7) of the clean water act (33 United States Code~~  
36 ~~section 1362(7)).~~

37 ~~23.~~ 25. "New facility" means a previously closed facility that  
38 resumes operation or a facility on which construction was begun after  
39 August 13, 1986 on a site at which no other facility is located or to  
40 totally replace the process or production equipment that causes the  
41 discharge from an existing facility. A major modification to an existing  
42 facility is deemed a new facility to the extent that the criteria in  
43 section 49-243, subsection B, paragraph 1 can be practicably applied to  
44 such modification. For the purposes of this definition, construction on a  
45 facility has begun if the facility owner or operator has either:

1 (a) Begun, or caused to begin as part of a continuous on-site  
2 construction program, any placement, assembly or installation of a  
3 building, structure or equipment.

4 (b) Entered a binding contractual obligation to purchase a  
5 building, structure or equipment ~~which~~ THAT is intended to be used in its  
6 operation within a reasonable time. Options to purchase or contracts  
7 ~~which~~ THAT can be terminated or modified without substantial loss, and  
8 contracts for feasibility engineering and design studies, do not  
9 constitute a contractual obligation for purposes of this definition.

10 ~~24.~~ 26. "Nonpoint source" means any conveyance ~~which~~ THAT is not a  
11 point source from which pollutants are or may be discharged to ~~navigable~~  
12 ~~waters~~ WOTUS.

13 27. "NON-WOTUS PROTECTED SURFACE WATER" MEANS A PROTECTED SURFACE  
14 WATER THAT IS NOT A WOTUS.

15 28. "NON-WOTUS WATERS OF THE STATE" MEANS WATERS OF THE STATE THAT  
16 ARE NOT WOTUS.

17 ~~25.~~ 29. "On-site wastewater treatment facility" means a  
18 conventional septic tank system or alternative system that is installed at  
19 a site to treat and dispose of wastewater of predominantly human origin  
20 that is generated at that site.

21 30. "ORDINARY HIGH WATER MARK" MEANS THE LINE ON THE SHORE OF AN  
22 INTERMITTENT OR PERENNIAL PROTECTED SURFACE WATER ESTABLISHED BY THE  
23 FLUCTUATIONS OF WATER AND INDICATED BY PHYSICAL CHARACTERISTICS SUCH AS A  
24 CLEAR, NATURAL LINE IMPRESSED ON THE BANK, SHELVING, CHANGES IN THE  
25 CHARACTER OF SOIL, DESTRUCTION OF TERRESTRIAL VEGETATION, THE PRESENCE OF  
26 LITTER AND DEBRIS OR OTHER APPROPRIATE MEANS THAT CONSIDER THE  
27 CHARACTERISTICS OF THE CHANNEL, FLOODPLAIN AND RIPARIAN AREA.

28 31. "PERENNIAL WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE  
29 WATER THAT FLOWS CONTINUOUSLY THROUGHOUT THE YEAR.

30 ~~26.~~ 32. "Permit" means a written authorization issued by the  
31 director or prescribed by this chapter or in a rule adopted under this  
32 chapter stating the conditions and restrictions governing a discharge or  
33 governing the construction, operation or modification of a facility. FOR  
34 THE PURPOSES OF REGULATING NON-WOTUS PROTECTED SURFACE WATERS, A PERMIT  
35 SHALL NOT INCLUDE PROVISIONS GOVERNING THE CONSTRUCTION, OPERATION OR  
36 MODIFICATION OF A FACILITY EXCEPT AS NECESSARY FOR THE PURPOSE OF ENSURING  
37 THAT A DISCHARGE MEETS WATER QUALITY-RELATED EFFLUENT LIMITATIONS OR TO  
38 REQUIRE BEST MANAGEMENT PRACTICES FOR THE PURPOSE OF ENSURING THAT A  
39 DISCHARGE DOES NOT CAUSE AN EXCEEDANCE OF AN APPLICABLE SURFACE WATER  
40 QUALITY STANDARD.

41 ~~27.~~ 33. "Person" means an individual, employee, officer, managing  
42 body, trust, firm, joint stock company, consortium, public or private  
43 corporation, including a government corporation, partnership, association  
44 or state, a political subdivision of this state, a commission, the United

1 States government or any federal facility, interstate body or other  
2 entity.

3 ~~28.~~ 34. "Point source" means any discernible, confined and discrete  
4 conveyance, including, ~~but not limited to,~~ any pipe, ditch, channel,  
5 tunnel, conduit, well, discrete fissure, container, rolling stock,  
6 concentrated animal feeding operation or vessel or other floating craft  
7 from which pollutants are or may be discharged to ~~navigable waters~~ WOTUS  
8 OR PROTECTED SURFACE WATER. Point source does not include return flows  
9 from irrigated agriculture.

10 ~~29.~~ 35. "Pollutant" means fluids, contaminants, toxic wastes, toxic  
11 pollutants, dredged spoil, solid waste, substances and chemicals,  
12 pesticides, herbicides, fertilizers and other agricultural chemicals,  
13 incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum  
14 products, chemical wastes, biological materials, radioactive materials,  
15 heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining,  
16 industrial, municipal and agricultural wastes or any other liquid, solid,  
17 gaseous or hazardous substances.

18 ~~30.~~ 36. "Postclosure monitoring and maintenance" means those  
19 activities that are conducted after closure notification and that are  
20 necessary to:

21 (a) Keep the facility in compliance with either the aquifer water  
22 quality standards at the applicable point of compliance or, for any  
23 aquifer water quality standard that is exceeded at the time the aquifer  
24 protection permit is issued, the requirement to prevent the facility from  
25 further degrading the aquifer at the applicable point of compliance as  
26 provided under section 49-243, subsection B, paragraph 3.

27 (b) Verify that the actions or controls specified as closure  
28 requirements in an approved closure plan or strategy are routinely  
29 inspected and maintained.

30 (c) Perform any remedial, mitigative or corrective actions or  
31 controls as specified in the aquifer protection permit or perform  
32 corrective action as necessary to comply with this paragraph and article 3  
33 of this chapter.

34 (d) Meet property use restrictions.

35 ~~31.~~ 37. "Practicably" means able to be reasonably done from the  
36 standpoint of technical practicability and, except for pollutants  
37 addressed in section 49-243, subsection I, economically achievable on an  
38 industry-wide basis.

39 38. "PROTECTED SURFACE WATERS" MEANS WATERS OF THE STATE LISTED ON  
40 THE PROTECTED SURFACE WATERS LIST UNDER SECTION 49-221, SUBSECTION G AND  
41 ALL WOTUS.

42 39. "PUBLIC WATERS" MEANS WATERS OF THE STATE OPEN TO OR MANAGED FOR  
43 USE BY MEMBERS OF THE GENERAL PUBLIC.

1           40. "RECHARGE PROJECT" MEANS A FACILITY NECESSARY OR CONVENIENT TO  
2 OBTAIN, DIVERT, WITHDRAW, TRANSPORT, EXCHANGE, DELIVER, TREAT OR STORE  
3 WATER TO INFILTRATE OR REINTRODUCE THAT WATER INTO THE GROUND.

4           ~~32.~~ 41. "Reclaimed water" means water that has been treated or  
5 processed by a wastewater treatment plant or an on-site wastewater  
6 treatment facility.

7           ~~33.~~ 42. "Regulated agricultural activity" means the application of  
8 nitrogen fertilizer or a concentrated animal feeding operation.

9           ~~34.~~ 43. "Safe drinking water act" means the federal safe drinking  
10 water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

11           ~~35.~~ 44. "Standards" means water quality standards, pretreatment  
12 standards and toxicity standards established pursuant to this chapter.

13           ~~36.~~ 45. "Standards of performance" means performance standards,  
14 design standards, best management practices, technologically based  
15 standards and other standards, limitations or restrictions established by  
16 the director by rule or by permit condition.

17           ~~37.~~ 46. "Tank" means a stationary device, including a sump, that is  
18 constructed of concrete, steel, plastic, fiberglass, or other non-earthen  
19 material that provides substantial structural support, and that is  
20 designed to contain an accumulation of solid, liquid or gaseous materials.

21           ~~38.~~ 47. "Toxic pollutant" means a substance that will cause  
22 significant adverse reactions if ingested in drinking water. Significant  
23 adverse reactions are reactions that may indicate a tendency of a  
24 substance or mixture to cause long lasting or irreversible damage to human  
25 health.

26           ~~39.~~ 48. "Trade secret" means information to which all of the  
27 following apply:

28           (a) A person has taken reasonable measures to protect from  
29 disclosure and the person intends to continue to take such measures.

30           (b) The information is not, and has not been, reasonably obtainable  
31 without the person's consent by other persons, other than governmental  
32 bodies, by use of legitimate means, other than discovery based on a  
33 showing of special need in a judicial or quasi-judicial proceeding.

34           (c) No statute specifically requires disclosure of the information  
35 to the public.

36           (d) The person has satisfactorily shown that disclosure of the  
37 information is likely to cause substantial harm to the business's  
38 competitive position.

39           ~~40.~~ 49. "Vadose zone" means the zone between the ground surface and  
40 any aquifer.

41           ~~41.~~ 50. "Waters of the state" means all waters within the  
42 jurisdiction of this state including all perennial or intermittent  
43 streams, lakes, ponds, impounding reservoirs, marshes, watercourses,  
44 waterways, wells, aquifers, springs, irrigation systems, drainage systems  
45 and other bodies or accumulations of surface, underground, natural,

1 artificial, public or private water situated wholly or partly in or  
2 bordering on the state.

3 ~~42.~~ 51. "Well" means a bored, drilled or driven shaft, pit or hole  
4 whose depth is greater than its largest surface dimension.

5 52. "WETLAND" MEANS, FOR THE PURPOSES OF NON-WOTUS PROTECTED SURFACE  
6 WATERS, AN AREA THAT IS INUNDATED OR SATURATED BY SURFACE OR GROUNDWATER  
7 AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND UNDER NORMAL  
8 CONDITIONS DOES SUPPORT, A PREVALENCE OF VEGETATION TYPICALLY ADAPTED FOR  
9 LIFE IN SATURATED SOIL CONDITIONS.

10 53. "WOTUS" MEANS WATERS OF THE STATE THAT ARE ALSO NAVIGABLE WATERS  
11 AS DEFINED BY SECTION 502(7) OF THE CLEAN WATER ACT.

12 54. "WOTUS PROTECTED SURFACE WATER" MEANS A PROTECTED SURFACE WATER  
13 THAT IS A WOTUS.

14 Sec. 3. Section 49-202, Arizona Revised Statutes, is amended to  
15 read:

16 49-202. Designation of state agency

17 A. The department is designated as the agency for this state for  
18 all purposes of the clean water act, including section 505, the resource  
19 conservation and recovery act, including section 7002, and the safe  
20 drinking water act. The department may take all actions necessary to  
21 administer and enforce these acts as provided in this section, including  
22 entering into contracts, grants and agreements, ~~the adoption, modification~~  
23 ~~ADOPTING, MODIFYING~~ or ~~repeat of~~ ~~REPEALING~~ rules, and initiating  
24 administrative and judicial actions to secure to this state the benefits,  
25 rights and remedies of such acts.

26 B. The department shall process requests under section 401 of the  
27 clean water act for certification of permits required by section 404 of  
28 the clean water act in accordance with subsections C through ~~H~~ I of this  
29 section. Subsections C, ~~and D, subsection E, paragraph 3, subsection F,~~  
30 ~~paragraph 3~~ G and ~~subsection H~~ I of this section apply to the  
31 certification of nationwide or general permits issued under section 404 of  
32 the clean water act. If the department has denied or failed to act on  
33 certification of a nationwide permit or general permit, subsections C  
34 through ~~H~~ I of this section apply to the certification of applications  
35 for or notices of coverage under those permits.

36 C. The department shall review the application for section 401  
37 certification solely to determine whether the effect of the discharge will  
38 comply with the water quality standards for ~~navigable waters~~ WOTUS  
39 established by department rules adopted pursuant to section 49-221,  
40 subsection A, and section 49-222. The department's review shall extend  
41 only to activities conducted within the ordinary high watermark of  
42 ~~navigable waters~~ WOTUS. To the extent that any other standards are  
43 considered applicable pursuant to section 401(a)(1) of the clean water  
44 act, certification of these standards is waived.

1 D. The department may include only those conditions on  
2 certification under section 401 of the clean water act that are required  
3 to ensure compliance with the standards identified in subsection C of this  
4 section. The department may impose reporting and monitoring requirements  
5 as conditions of certification under section 401 of the clean water act  
6 only in accordance with department rules.

7 ~~E. Until January 1, 1999:~~

8 ~~1. The department may request supplemental information from the~~  
9 ~~section 401 certification applicant if the information is necessary to~~  
10 ~~make the certification determination pursuant to subsection C of this~~  
11 ~~section. The department shall request this information in writing within~~  
12 ~~thirty calendar days after receipt of the application for section 401~~  
13 ~~certification. The request shall specifically describe the information~~  
14 ~~requested. Within fifteen calendar days after receipt of the applicant's~~  
15 ~~written response to a request for supplemental information, the department~~  
16 ~~shall either issue a written determination that the application is~~  
17 ~~complete or request specific additional information. The applicant may~~  
18 ~~deem any additional requests for supplemental information as a denial of~~  
19 ~~certification for purposes of subsection H of this section. If the~~  
20 ~~department fails to act within the time limits prescribed by this~~  
21 ~~subsection, the application is deemed complete.~~

22 ~~2. The department shall grant or deny section 401 certification and~~  
23 ~~shall send a written notice of the department's decision to the applicant~~  
24 ~~within thirty calendar days after receipt of a complete application for~~  
25 ~~certification. Written notice of a denial of section 401 certification~~  
26 ~~shall include a detailed description of the reasons for denial.~~

27 ~~3. The department may waive its right to certification by giving~~  
28 ~~written notice of that waiver to the applicant. The department's failure~~  
29 ~~to grant or deny an application within the time limits prescribed by this~~  
30 ~~section is deemed a waiver of certification pursuant to this subsection~~  
31 ~~and section 401(a)(2) of the clean water act.~~

32 ~~F. Beginning January 1, 1999:~~

33 ~~1. E.~~ E. The department may request supplemental information from the  
34 section 401 certification applicant if the information is necessary to  
35 make the certification determination pursuant to subsection C of this  
36 section. The department shall request this information in writing. The  
37 request shall specifically describe the information requested. After  
38 receipt of the applicant's written response to a request for supplemental  
39 information, the department shall either issue a written determination  
40 that the application is complete or request specific additional  
41 information. The applicant may deem any additional requests for  
42 supplemental information as a denial of certification for THE purposes of  
43 subsection ~~H~~ I of this section. In all other instances, the application  
44 is complete on submission of the information requested by the department.

1           ~~F.~~ F. The department shall grant or deny section 401 certification  
2 and shall send a written notice of the department's decision to the  
3 applicant after receipt of a complete application for certification.  
4 Written notice of a denial of section 401 certification shall include a  
5 detailed description of the reasons for denial.

6           ~~G.~~ G. The department may waive its right to certification by  
7 giving written notice of that waiver to the applicant. The department's  
8 failure to act on an application is deemed a waiver pursuant to this  
9 subsection and section 401(a)(2) of the clean water act.

10          ~~H.~~ H. The department shall adopt rules specifying the information  
11 the department requires an applicant to submit under this section in order  
12 to make the determination required by subsections C and D of this  
13 section. Until these rules are adopted, the department shall require an  
14 applicant to submit only the following information for certification under  
15 this section:

- 16           1. The name, address and telephone number of the applicant.
- 17           2. A description of the project to be certified, including an  
18 identification of the ~~navigable waters~~ WOTUS in which the certified  
19 activities will occur.
- 20           3. The project location, including latitude, longitude and a legal  
21 description.
- 22           4. A United States geological service topographic map or other  
23 contour map of the project area, if available.
- 24           5. A map delineating the ordinary high watermark of ~~navigable~~  
25 ~~waters~~ WOTUS affected by the activity to be certified.
- 26           6. A description of any measures to be applied to the activities  
27 being certified in order to control the discharge of pollutants to  
28 ~~navigable waters~~ WOTUS from those activities.
- 29           7. A description of the materials being discharged to or placed in  
30 ~~navigable waters~~ WOTUS.
- 31           8. A copy of the application for a federal permit or license that  
32 is the subject of the requested certification.

33          ~~I.~~ I. Pursuant to title 41, chapter 6, article 10 an applicant for  
34 certification may appeal a denial of certification or any conditions  
35 imposed on certification. Any person who is or may be adversely affected  
36 by the denial of or imposition of conditions on the certification of a  
37 nationwide or general permit may appeal that decision pursuant to title  
38 41, chapter 6, article 10.

39          ~~J.~~ J. Certification under section 401 of the clean water act is  
40 automatically granted for quarrying, crushing and screening of nonmetallic  
41 minerals in ephemeral waters if all of the following conditions are  
42 satisfied within the ordinary high watermark of jurisdictional waters:

- 43           1. There is no disposal of construction and demolition wastes and  
44 contaminated wastewater.

1           2. Water for dust suppression, if used, does not contain  
2 contaminants that could violate water quality standards.

3           3. Pollution from the operation of equipment in the mining area is  
4 removed and properly disposed.

5           4. Stockpiles of processed materials containing ten ~~per cent~~  
6 PERCENT or more of particles of silt are placed or stabilized to minimize  
7 loss or erosion during flow events. ~~As used in~~ FOR THE PURPOSES OF this  
8 paragraph, "silt" means particles finer than 0.0625 millimeter diameter on  
9 a dry weight basis.

10          5. Measures are implemented to minimize upstream and downstream  
11 scour during flood events to protect the integrity of buried pipelines.

12          6. On completion of quarrying operations in an area, areas denuded  
13 of shrubs and woody vegetation are revegetated to the maximum extent  
14 practicable.

15          ~~J.~~ K. For THE purposes of subsection ~~I~~ J of this section,  
16 "ephemeral waters" means waters of the state that have been designated as  
17 ephemeral in rules adopted by the department.

18          ~~K.~~ L. Certification under section 401 of the clean water act is  
19 automatically granted for any license or permit required for:

20           1. Corrective actions taken pursuant to chapter 6, article 1 of  
21 this title in response to a release of a regulated substance as defined in  
22 section 49-1001 except for those off-site facilities that receive for  
23 treatment or disposal materials that are contaminated with a regulated  
24 substance and that are received as part of a corrective action.

25           2. Response or remedial actions undertaken pursuant to chapter 2,  
26 article 5 of this title or pursuant to CERCLA.

27           3. Corrective actions taken pursuant to chapter 5, article 1 of  
28 this title or the resource conservation AND recovery act of 1976, as  
29 amended (42 United States Code sections 6901 through 6992).

30           4. Other remedial actions that have been reviewed and approved by  
31 the appropriate government authority and taken pursuant to applicable  
32 federal or state laws.

33          ~~I.~~ M. The department of environmental quality is designated as the  
34 state water pollution control agency for this state for all purposes of  
35 CERCLA, except that the department of water resources has joint authority  
36 with the department of environmental quality to conduct feasibility  
37 studies and remedial investigations relating to groundwater quality and  
38 may enter into contracts and cooperative agreements under section 104 of  
39 CERCLA for such studies and remedial investigations. The department of  
40 environmental quality may take all action necessary or appropriate to  
41 secure to this state the benefits of the act, and all such action shall be  
42 taken at the direction of the director of environmental quality as ~~his~~ THE  
43 DIRECTOR'S duties are prescribed in this chapter.

44          ~~M.~~ N. The director and the department of environmental quality may  
45 enter into an interagency contract or agreement with the director of water

1 resources under title 11, chapter 7, article 3 to implement the provisions  
2 of section 104 of CERCLA and to carry out the purposes of subsection ~~4~~ M  
3 of this section.

4 Sec. 4. Section 49-202.01, Arizona Revised Statutes, is amended to  
5 read:

6 49-202.01. Surface water quality general grazing permit; best  
7 management practices for grazing activities;  
8 definition

9 A. As part of the duties established pursuant to section 49-203,  
10 subsection A, paragraph ~~3~~ 4, the director shall implement a surface water  
11 quality general grazing permit consisting of voluntary best management  
12 practices for grazing activities.

13 B. The terms and conditions of the surface water quality general  
14 grazing permit shall be voluntary best management practices that have been  
15 determined by the committee to be the most practical and effective means  
16 of reducing or preventing the nonpoint source discharge of pollutants into  
17 ~~navigable waters~~ WOTUS by grazing activities.

18 C. In adopting voluntary grazing best management practices, the  
19 committee shall consider:

20 1. The availability and effectiveness of alternative technologies.

21 2. The economic and social impacts of alternative technologies on  
22 grazing and associated industries.

23 3. The institutional considerations of alternative technologies.

24 4. The potential nature and severity of discharges from grazing  
25 activities and their effect on ~~navigable waters~~ WOTUS.

26 D. For the purposes of this section, "grazing activities" means the  
27 feeding of all classes of domestic ruminant and nonruminant animals on  
28 grasses, forbs and shrubs in Arizona watersheds.

29 Sec. 5. Section 49-203, Arizona Revised Statutes, is amended to  
30 read:

31 49-203. Powers and duties of the director and department

32 A. The director shall:

33 1. Adopt, by rule, water quality standards in the form and subject  
34 to the considerations prescribed by article 2 of this chapter.

35 2. Adopt, by rule, a permit program FOR WOTUS that is consistent  
36 with but ~~no~~ NOT more stringent than the requirements of the clean water  
37 act for the point source discharge of any pollutant or combination of  
38 pollutants into ~~navigable waters~~ WOTUS. The program and the rules shall  
39 be sufficient to enable this state to administer the permit program  
40 identified in section 402(b) of the clean water act, including the sewage  
41 sludge requirements of section 405 of the clean water act and as  
42 prescribed by article 3.1 of this chapter.

43 3. APPLY THE PROGRAM AND RULES AUTHORIZED UNDER PARAGRAPH 2 OF THIS  
44 SUBSECTION TO POINT SOURCE DISCHARGES TO NON-WOTUS PROTECTED SURFACE  
45 WATERS, CONSISTENT WITH SECTION 49-255.04, WHICH ESTABLISHES THE PROGRAM

1 COMPONENTS AND RULES THAT DO NOT APPLY TO NON-WOTUS PROTECTED SURFACE  
2 WATERS. THE FOLLOWING ARE EXEMPT FROM THE NON-WOTUS PROTECTED SURFACE  
3 WATERS POINT SOURCE DISCHARGE PROGRAM:

4 (a) DISCHARGES TO A NON-WOTUS PROTECTED SURFACE WATER INCIDENTAL TO  
5 A RECHARGE PROJECT.

6 (b) ESTABLISHED OR ONGOING FARMING, RANCHING AND SILVICULTURE  
7 ACTIVITIES SUCH AS PLOWING, SEEDING, CULTIVATING, MINOR DRAINAGE OR  
8 HARVESTING FOR THE PRODUCTION OF FOOD, FIBER OR FOREST PRODUCTS OR UPLAND  
9 SOIL AND WATER CONSERVATION PRACTICES.

10 (c) MAINTENANCE BUT NOT CONSTRUCTION OF DRAINAGE DITCHES.

11 (d) CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES.

12 (e) MAINTENANCE OF STRUCTURES SUCH AS DAMS, DIKES AND LEVEES.

13 ~~5-~~ 4. Adopt, by rule, a program to control nonpoint source  
14 discharges of any pollutant or combination of pollutants into ~~navigable~~  
15 ~~waters~~ WOTUS.

16 ~~4-~~ 5. Adopt, by rule, an aquifer protection permit program to  
17 control discharges of any pollutant or combination of pollutants that are  
18 reaching or may with a reasonable probability reach an aquifer. The  
19 permit program shall be as prescribed by article 3 of this chapter.

20 ~~5-~~ 6. Adopt, by rule, the permit program for underground injection  
21 control described in the safe drinking water act.

22 ~~6-~~ 7. Adopt, by rule, technical standards for conveyances of  
23 reclaimed water and a permit program for the direct reuse of reclaimed  
24 water.

25 ~~7-~~ 8. Adopt, by rule or as permit conditions, discharge  
26 limitations, best management practice standards, new source performance  
27 standards, toxic and pretreatment standards and other standards and  
28 conditions as reasonable and necessary to carry out the permit programs  
29 and regulatory duties described in paragraphs 2 through ~~5-~~ 6 of this  
30 subsection.

31 ~~8-~~ 9. Assess and collect fees to revoke, issue, deny, modify or  
32 suspend permits issued pursuant to this chapter and to process permit  
33 applications. The director may also assess and collect costs reasonably  
34 necessary if the director must conduct sampling or monitoring relating to  
35 a facility because the owner or operator of the facility has refused or  
36 failed to do so on order by the director. The director shall set fees  
37 that are reasonably related to the department's costs of providing the  
38 service for which the fee is charged. Monies collected from aquifer  
39 protection permit fees and from Arizona pollutant discharge elimination  
40 system permit fees shall be deposited, pursuant to sections 35-146 and  
41 35-147, in the water quality fee fund established by section 49-210.  
42 Monies from other permit fees shall be deposited, pursuant to sections  
43 35-146 and 35-147, in the water quality fee fund unless otherwise provided  
44 by law. Monies paid by an applicant for review by consultants for the  
45 department pursuant to section 49-241.02, subsection D shall be deposited,

1 pursuant to sections 35-146 and 35-147, in the water quality fee fund  
2 established by section 49-210. State agencies are exempt from all fees  
3 imposed pursuant to this chapter except for those fees associated with the  
4 dredge and fill permit program established pursuant to article 3.2 of this  
5 chapter. For services provided under the dredge and fill permit program,  
6 a state agency shall pay either:

7 (a) The fees established by the department under the dredge and  
8 fill permit program.

9 (b) The reasonable cost of services provided by the department  
10 pursuant to an interagency service agreement.

11 ~~9.~~ 10. Adopt, modify, repeal and enforce other rules that are  
12 reasonably necessary to carry out the director's functions under this  
13 chapter.

14 ~~10.~~ 11. Require monitoring at an appropriate point of compliance  
15 for any organic or inorganic pollutant listed under section 49-243,  
16 subsection I if the director has reason to suspect the presence of the  
17 pollutant in a discharge.

18 ~~11.~~ 12. Adopt rules establishing what constitutes a significant  
19 increase or adverse alteration in the characteristics or volume of  
20 pollutants discharged for purposes of determining what constitutes a major  
21 modification to an existing facility under the definition of new facility  
22 pursuant to section 49-201. Before the adoption of these rules, the  
23 director shall determine whether a change at a particular facility results  
24 in a significant increase or adverse alteration in the characteristics or  
25 volume of pollutants discharged on a case-by-case basis, taking into  
26 account site conditions and operational factors.

27 13. CONSIDER EVIDENCE GATHERED BY THE ARIZONA NAVIGABLE STREAM  
28 ADJUDICATION COMMISSION ESTABLISHED BY SECTION 37-1121 WHEN DECIDING  
29 WHETHER A PERMIT IS REQUIRED TO DISCHARGE PURSUANT TO ARTICLE 3.1 OF THIS  
30 CHAPTER.

31 B. The director may:

32 1. On presentation of credentials, enter into, on or through any  
33 public or private property from which a discharge has occurred, is  
34 occurring or may occur or on which any disposal, land application of  
35 sludge or treatment regulated by this chapter has occurred, is occurring  
36 or may be occurring and any public or private property where records  
37 relating to a discharge or records that are otherwise required to be  
38 maintained as prescribed by this chapter are kept, as reasonably necessary  
39 to ensure compliance with this chapter. The director or a department  
40 employee may take samples, inspect and copy records required to be  
41 maintained pursuant to this chapter, inspect equipment, activities,  
42 facilities and monitoring equipment or methods of monitoring, take  
43 photographs and take other action reasonably necessary to determine the  
44 application of, or compliance with, this chapter. The owner or managing  
45 agent of the property shall be afforded the opportunity to accompany the

1 director or department employee during inspections and investigations, but  
2 prior notice of entry to the owner or managing agent is not required if  
3 reasonable grounds exist to believe that notice would frustrate the  
4 enforcement of this chapter. If the director or department employee  
5 obtains any samples before leaving the premises, the director or  
6 department employee shall give the owner or managing agent a receipt  
7 describing the samples obtained and a portion of each sample equal in  
8 volume or weight to the portion retained. If an analysis is made of  
9 samples, or monitoring and testing are performed, a copy of the results  
10 shall be furnished promptly to the owner or managing agent.

11 2. Require any person who has discharged, is discharging or may  
12 discharge into the waters of the state under article 3, 3.1, ~~or~~ 3.2 or 3.3  
13 of this chapter and any person who is subject to pretreatment standards  
14 and requirements or sewage sludge use or disposal requirements under  
15 article 3.1 of this chapter to collect samples, to establish and maintain  
16 records, including photographs, and to install, use and maintain sampling  
17 and monitoring equipment to determine the absence or presence and nature  
18 of the discharge or indirect discharge or sewage sludge use or disposal.

19 3. Administer state or federal grants, including grants to  
20 political subdivisions of this state, for the construction and  
21 installation of publicly and privately owned pollutant treatment works and  
22 pollutant control devices and establish grant application priorities.

23 4. Develop, implement and administer a water quality planning  
24 process, including a ranking system for applicant eligibility, wherein  
25 appropriated state monies and available federal monies are awarded to  
26 political subdivisions of this state to support or assist regional water  
27 quality planning programs and activities.

28 5. Enter into contracts and agreements with the federal government  
29 to implement federal environmental statutes and programs.

30 6. Enter into intergovernmental agreements pursuant to title 11,  
31 chapter 7, article 3 if the agreement is necessary to more effectively  
32 administer the powers and duties described in this chapter.

33 7. Participate in, conduct and contract for studies,  
34 investigations, research and demonstrations relating to the causes,  
35 minimization, prevention, correction, abatement, mitigation, elimination,  
36 control and remedy of discharges and collect and disseminate information  
37 relating to discharges.

38 8. File bonds or other security as required by a court in any  
39 enforcement actions under article 4 of this chapter.

40 9. Adopt by rule a permit program for the discharge of dredged or  
41 fill material into ~~navigable waters~~ WOTUS for purposes of implementing the  
42 permit program established by 33 United States Code section 1344.

43 C. Subject to section 38-503 and other applicable statutes and  
44 rules, the department may contract with a private consultant ~~for the~~  
45 ~~purposes of assisting~~ TO ASSIST the department in reviewing aquifer

1 protection permit applications and on-site wastewater treatment facilities  
2 to determine whether a facility meets the criteria and requirements of  
3 this chapter and the rules adopted by the director. Except as provided in  
4 section 49-241.02, subsection D, the department shall not use a private  
5 consultant if the fee charged for that service would be greater than the  
6 fee the department would charge to provide that service. The department  
7 shall pay the consultant for the services rendered by the consultant from  
8 fees paid by the applicant or facility to the department pursuant to  
9 subsection A, paragraph ~~8~~ 9 of this section.

10 D. The director shall integrate all of the programs authorized in  
11 this section and other programs affording water quality protection that  
12 are administered by the department for purposes of administration and  
13 enforcement and shall avoid duplication and dual permitting to the maximum  
14 extent practicable.

15 Sec. 6. Section 49-210, Arizona Revised Statutes, is amended to  
16 read:

17 49-210. Water quality fee fund; appropriation; exemption;  
18 monies held in trust

19 A. The water quality fee fund is established consisting of monies  
20 appropriated by the legislature and fees received pursuant to sections  
21 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352,  
22 49-353 and 49-361. The director shall administer the fund.

23 B. Monies in the fund are subject to annual legislative  
24 appropriation to the department for water quality programs. Monies in the  
25 fund are exempt from the provisions of section 35-190 relating to lapsing  
26 of appropriations.

27 C. On notice from the director, the state treasurer shall invest  
28 and divest monies in the fund as provided by section 35-313, and monies  
29 earned from investment shall be credited to the fund.

30 D. Monies in the water quality fee fund shall be used for the  
31 following purposes:

32 1. ~~The issuance of~~ TO ISSUE aquifer protection permits pursuant to  
33 section 49-241.

34 2. The aquifer protection permit registration fee procedures  
35 pursuant to section 49-242.

36 3. Dry well registration fee procedures pursuant to section 49-332.

37 4. Technical review fee procedures pursuant to section 49-353.

38 5. Inspection fee procedures pursuant to section 49-104,  
39 subsection C.

40 6. ~~The issuance of~~ TO ISSUE permits under the Arizona pollutant  
41 discharge elimination system program pursuant to section 49-255.01.

42 7. Operator certification pursuant to sections 49-352 and 49-361.

43 8. Paying the cost of implementing section 49-203, subsection A,  
44 paragraph ~~6~~ 7 and section 49-221, subsection E.

1 9. Water quality monitoring pursuant to section 49-225 and  
2 reporting of aquifer pollution information pursuant to section 49-249.

3 10. ~~Implementation TO IMPLEMENT~~ and ~~administration of ADMINISTER~~  
4 the underground injection control permit program established pursuant to  
5 article 3.3 of this chapter.

6 11. ~~Implementation TO IMPLEMENT~~ and ~~administration of ADMINISTER~~  
7 the dredge and fill permit program established pursuant to article 3.2 of  
8 this chapter, including review and analysis for issuing jurisdictional  
9 determinations.

10 E. Any fee, assessment or other levy that is authorized by law or  
11 administrative rule and that is collected and deposited in the water  
12 quality fee fund shall be held in trust. The monies in the fund may be  
13 used only for the purposes prescribed by statute and shall not be  
14 appropriated or transferred by the legislature to fund the general  
15 operations of this state or to otherwise meet the obligations of the  
16 general fund of this state. This subsection does not apply to any taxes  
17 or other levies that are imposed pursuant to title 42 or 43.

18 Sec. 7. Section 49-221, Arizona Revised Statutes, is amended to  
19 read:

20 49-221. Water quality standards in general; protected surface  
21 waters list

22 A. The director shall:

23 1. Adopt, by rule, water quality standards for all ~~navigable~~  
24 ~~waters~~ WOTUS and for all waters in all aquifers to preserve and protect  
25 the quality of those waters for all present and reasonably foreseeable  
26 future uses. FOR NON-WOTUS PROTECTED SURFACE WATERS, THE DIRECTOR SHALL  
27 APPLY SURFACE WATER QUALITY STANDARDS ESTABLISHED AS OF JANUARY 1, 2021,  
28 UNTIL SPECIFICALLY CHANGED BY THE DIRECTOR PURSUANT TO PARAGRAPH 2 OF THIS  
29 SUBSECTION. RULES REGARDING THE FOLLOWING SHALL NOT BE ADOPTED OR APPLIED  
30 AS WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS:

- 31 (a) ANTIDEGRADATION.
- 32 (b) ANTIDEGRADATION CRITERIA.
- 33 (c) OUTSTANDING ARIZONA WATERS.

34 2. ADOPT, BY RULE, WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED  
35 SURFACE WATERS, BY DECEMBER 31, 2022, CONSISTENT WITH PARAGRAPH 1 OF THIS  
36 SUBSECTION AND AS DETERMINED NECESSARY IN THE RULEMAKING PROCESS. IN  
37 ADOPTING THOSE STANDARDS, THE DIRECTOR SHALL CONSIDER THE UNIQUE  
38 CHARACTERISTICS OF THIS STATE'S SURFACE WATERS AND THE ECONOMIC, SOCIAL  
39 AND ENVIRONMENTAL COSTS AND BENEFITS THAT WOULD RESULT FROM THE ADOPTION  
40 OF A WATER QUALITY STANDARD AT A PARTICULAR LEVEL OR FOR A PARTICULAR  
41 WATER CATEGORY.

42 B. The director may adopt, by rule, water quality standards for  
43 waters of the state other than those described in subsection A of this  
44 section, including standards for the use of water pumped from an aquifer  
45 that does not meet the standards adopted pursuant to section 49-223,

1 subsections A and B and that is put to a beneficial use other than  
2 drinking water. These standards may include standards for the use of  
3 water pumped as part of a remedial action. In adopting such standards,  
4 the director shall consider the economic, social and environmental costs  
5 and benefits that would result from the adoption of a water quality  
6 standard at a particular level or for a particular water category.

7 C. In setting standards pursuant to subsection A or B of this  
8 section, the director shall consider, ~~but not be limited to,~~ the  
9 following:

10 1. The protection of the public health and the environment.

11 2. The uses that have been made, are being made or with reasonable  
12 probability may be made of these waters.

13 3. The provisions and requirements of the clean water act and safe  
14 drinking water act and the regulations adopted pursuant to those acts.

15 4. The degree to which standards for one category of waters could  
16 cause violations of standards for other, hydrologically connected, water  
17 categories.

18 5. Guidelines, action levels or numerical criteria adopted or  
19 recommended by the United States environmental protection agency or any  
20 other federal agency.

21 6. Any unique physical, biological or chemical properties of the  
22 waters.

23 D. Water quality standards shall be expressed in terms of the uses  
24 to be protected and, if adequate information exists to do so, numerical  
25 limitations or parameters, in addition to any narrative standards that the  
26 director deems appropriate.

27 E. The director may adopt by rule water quality standards for the  
28 direct reuse of reclaimed water. In establishing these standards, the  
29 director shall consider the following:

30 1. The protection of public health and the environment.

31 2. The uses that are being made or may be made of the reclaimed  
32 water.

33 3. The degree to which standards for the direct reuse of reclaimed  
34 water may cause violations of water quality standards for other  
35 hydrologically connected water categories.

36 F. If the director proposes to adopt water quality standards for  
37 agricultural water, the director shall consult, cooperate, collaborate  
38 and, if necessary, enter into interagency agreements and memoranda of  
39 understanding with the Arizona department of agriculture relating to its  
40 administration, ~~pursuant to title 3, chapter 3, article 4.1,~~ of this  
41 state's authority relating to agricultural water under the United States  
42 food and drug administration produce safety rule (21 Code of Federal  
43 Regulations part 112, subpart E) and any other federal produce safety  
44 regulation, order or guideline or other requirement adopted pursuant to

1 the FDA food safety modernization act (P.L. 111-353; 21 United States Code  
2 sections 2201 through 2252). For the purposes of this subsection:

3 1. "Agricultural water":

4 (a) Means water that is used in a covered activity on produce where  
5 water is intended to, or is likely to, contact produce or food contact  
6 surfaces.

7 (b) Includes all of the following:

8 (i) Water used in growing activities, including irrigation water,  
9 water used for preparing crop sprays and water used for growing sprouts.

10 (ii) Water used in harvesting, packing and holding activities,  
11 including water used for washing or cooling harvested produce and water  
12 used for preventing dehydration of produce.

13 2. "Covered activity" means growing, harvesting, packing or holding  
14 produce. Covered activity includes processing produce to the extent that  
15 the activity is within the meaning of farm as defined in section 3-525.

16 3. "Harvesting" has the same meaning prescribed in section 3-525.

17 4. "Holding" has the same meaning prescribed in section 3-525.

18 5. "Packing" has the same meaning prescribed in section 3-525.

19 6. "Produce" has the same meaning prescribed in section 3-525.

20 G. THE DIRECTOR SHALL MAINTAIN AND PUBLISH A PROTECTED SURFACE  
21 WATERS LIST. THE DEPARTMENT SHALL PUBLISH THE INITIAL LIST ON THE  
22 DEPARTMENT'S WEBSITE AND IN THE ARIZONA ADMINISTRATIVE REGISTER WITHIN  
23 THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.  
24 NOT LATER THAN DECEMBER 31, 2022, THE DEPARTMENT SHALL ADOPT BY RULE THE  
25 PROTECTED SURFACE WATERS LIST, INCLUDING PROCEDURES FOR DETERMINING  
26 ECONOMIC, SOCIAL AND ENVIRONMENTAL COSTS AND BENEFITS. PUBLICATION OF THE  
27 LIST IN THE ARIZONA ADMINISTRATIVE REGISTER IS AN APPEALABLE AGENCY ACTION  
28 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10 AND MAY BE APPEALED BY ANY  
29 PARTY THAT PROVIDES EVIDENCE OF AN ACTUAL ADVERSE EFFECT THAT THE PARTY  
30 APPEALING THE DECISION WOULD SUFFER AS A RESULT OF THE DIRECTOR'S  
31 DECISION. ALL OF THE FOLLOWING APPLY TO THE PROTECTED SURFACE WATER LIST:

32 1. THE PROTECTED SURFACE WATERS LIST SHALL INCLUDE:

33 (a) ALL WOTUS.

34 (b) ANY PERENNIAL, INTERMITTENT AND EPHEMERAL REACHES AND ANY  
35 IMPOUNDMENTS OF THE FOLLOWING RIVERS, NOT INCLUDING TRIBUTARIES OR REACHES  
36 OF WATERS WHOLLY WITHIN TRIBAL JURISDICTION OR REACHES OF WATERS OUTSIDE  
37 OF THE UNITED STATES:

38 (i) THE BILL WILLIAMS RIVER, FROM THE CONFLUENCE OF THE BIG SANDY  
39 AND SANTA MARIA RIVERS AT 113°31'38.617"W, 34°18'22.373"N, TO ITS  
40 CONFLUENCE WITH THE COLORADO RIVER AT 114°8'9.854"W, 34°18'9.33"N.

41 (ii) THE COLORADO RIVER, FROM THE ARIZONA-UTAH BORDER AT  
42 111°32'35.741"W, 36°58'51.698"N, TO THE ARIZONA-MEXICO BORDER AT 114°  
43 43'12.564"W, 32°43'6.218"N.

1 (iii) THE GILA RIVER, FROM THE ARIZONA-NEW MEXICO BORDER AT  
2 109°2'52.8"W, 32°41'11.2015"N, TO THE CONFLUENCE WITH THE COLORADO RIVER  
3 AT 114°33'28.145"W, 32°43'14.408"N.

4 (iv) THE LITTLE COLORADO RIVER, FROM THE CONFLUENCE OF THE EAST AND  
5 WEST FORKS OF THE LITTLE COLORADO RIVER AT 109°28'7.131"W, 33°59'39.852"N,  
6 TO ITS CONFLUENCE WITH THE COLORADO RIVER AT 111°49'4.693"W,  
7 36°12'10.243"N.

8 (v) THE SALT RIVER, FROM THE CONFLUENCE OF THE BLACK AND WHITE  
9 RIVERS AT 110°13'39.5"W, 33°44'6.082"N, TO THE CONFLUENCE WITH THE GILA  
10 RIVER AT 112°18'5.704"W, 33°22'42.978"N.

11 (vi) THE SAN PEDRO RIVER, FROM THE ARIZONA-MEXICO BORDER AT  
12 110°9'1.704"W, 31°20'2.387"N, TO THE CONFLUENCE WITH THE GILA RIVER AT  
13 110°47'0.905"W, 32°59'5.671"N.

14 (vii) THE SANTA CRUZ RIVER, FROM ITS ORIGINS IN THE CANELO HILLS OF  
15 SOUTHEASTERN ARIZONA AT 110°37'3.968"W, 31°27'39.21"N, TO ITS CONFLUENCE  
16 WITH THE GILA RIVER AT 111°33'26.02"W, 32°41'39.058"N.

17 (viii) THE VERDE RIVER, FROM SULLIVAN LAKE AT 112°28'10.588"W,  
18 34°52'11.136"N, TO ITS CONFLUENCE WITH THE SALT RIVER AT 111°39'48.32"W,  
19 33°33'20.538"N.

20 (c) ANY NON-WOTUS WATERS OF THE STATE THAT ARE ADDED UNDER  
21 PARAGRAPHS 3 AND 4 OF THIS SUBSECTION.

22 2. NOTWITHSTANDING PARAGRAPH 1 OF THIS SUBSECTION, THE PROTECTED  
23 SURFACE WATERS LIST SHALL NOT CONTAIN ANY OF THE FOLLOWING NON-WOTUS  
24 WATERS:

25 (a) CANALS IN THE YUMA PROJECT AND DITCHES, CANALS, PIPES,  
26 IMPOUNDMENTS AND OTHER FACILITIES THAT ARE OPERATED BY DISTRICTS ORGANIZED  
27 UNDER TITLE 48, CHAPTERS 18, 19, 20, 21 AND 22 AND THAT ARE NOT USED TO  
28 DIRECTLY DELIVER WATER FOR HUMAN CONSUMPTION, EXCEPT WHEN ADDED PURSUANT  
29 TO PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST  
30 FROM THE OWNER AND OPERATOR OF THE DITCH OR CANAL UNTIL THE OWNER AND  
31 OPERATOR WITHDRAWS ITS REQUEST.

32 (b) IRRIGATED AREAS, INCLUDING FIELDS FLOODED FOR AGRICULTURAL  
33 PRODUCTION.

34 (c) ORNAMENTAL AND URBAN PONDS AND LAKES SUCH AS THOSE OWNED BY  
35 HOMEOWNERS' ASSOCIATIONS AND GOLF COURSES, EXCEPT WHEN ADDED PURSUANT TO  
36 PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM  
37 THE OWNER OF THE ORNAMENTAL OR URBAN POND OR LAKE UNTIL THE OWNER  
38 WITHDRAWS ITS REQUEST.

39 (d) SWIMMING POOLS AND OTHER BODIES OF WATER THAT ARE REGULATED  
40 PURSUANT TO SECTION 49-104, SUBSECTION B.

41 (e) LIVESTOCK AND WILDLIFE WATER TANKS AND AQUACULTURE TANKS THAT  
42 ARE NOT CONSTRUCTED WITHIN A PROTECTED SURFACE WATER.

43 (f) STORMWATER CONTROL FEATURES.

44 (g) GROUNDWATER RECHARGE, WATER REUSE AND WASTEWATER RECYCLING  
45 STRUCTURES, INCLUDING UNDERGROUND STORAGE FACILITIES AND GROUNDWATER

1 SAVINGS FACILITIES PERMITTED UNDER TITLE 45, CHAPTER 3.1 AND DETENTION AND  
2 INFILTRATION BASINS, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS  
3 SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM THE OWNER OF THE  
4 GROUNDWATER RECHARGE, WATER REUSE OR WASTEWATER RECYCLING STRUCTURE UNTIL  
5 THE OWNER WITHDRAWS ITS REQUEST.

6 (h) WATER-FILLED DEPRESSIONS CREATED AS PART OF MINING OR  
7 CONSTRUCTION ACTIVITIES OR PITS EXCAVATED TO OBTAIN FILL, SAND OR GRAVEL.

8 (i) ALL WASTE TREATMENT SYSTEMS COMPONENTS, INCLUDING CONSTRUCTED  
9 WETLANDS, LAGOONS AND TREATMENT PONDS, SUCH AS SETTLING OR COOLING PONDS,  
10 DESIGNED TO EITHER CONVEY OR RETAIN, CONCENTRATE, SETTLE, REDUCE OR REMOVE  
11 POLLUTANTS, EITHER ACTIVELY OR PASSIVELY, FROM WASTEWATER BEFORE DISCHARGE  
12 OR TO ELIMINATE DISCHARGE.

13 (j) GROUNDWATER.

14 (k) EPHEMERAL WATERS EXCEPT FOR THOSE PRESCRIBED IN PARAGRAPH 1,  
15 SUBDIVISION (b) OF THIS SUBSECTION.

16 (l) LAKES AND PONDS OWNED AND MANAGED BY THE UNITED STATES  
17 DEPARTMENT OF DEFENSE AND OTHER SURFACE WATERS LOCATED ON AND THAT DO NOT  
18 LEAVE UNITED STATES DEPARTMENT OF DEFENSE PROPERTY, EXCEPT WHEN ADDED  
19 PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN  
20 REQUEST FROM THE UNITED STATES DEPARTMENT OF DEFENSE UNTIL IT WITHDRAWS  
21 ITS REQUEST.

22 3. UNLESS LISTED IN PARAGRAPH 2 OF THIS SUBSECTION, THE DIRECTOR  
23 SHALL ADD THE FOLLOWING NON-WOTUS SURFACE WATERS TO THE PROTECTED SURFACE  
24 WATERS LIST:

25 (a) ALL LAKES, PONDS AND RESERVOIRS THAT ARE PUBLIC WATERS USED AS A  
26 DRINKING SOURCE, FOR RECREATIONAL OR COMMERCIAL FISH CONSUMPTION OR FOR  
27 WATER-BASED RECREATION SUCH AS SWIMMING, WADING AND BOATING AND OTHER  
28 TYPES OF RECREATION IN AND ON THE WATER.

29 (b) PERENNIAL WATERS OR INTERMITTENT WATERS OF THE STATE THAT ARE  
30 USED AS A DRINKING WATER SOURCE, INCLUDING DITCHES AND CANALS.

31 (c) PERENNIAL OR INTERMITTENT TRIBUTARIES TO THE BILL WILLIAMS  
32 RIVER, THE COLORADO RIVER, THE GILA RIVER, THE LITTLE COLORADO RIVER, THE  
33 SALT RIVER, THE SAN PEDRO RIVER, THE SANTA CRUZ RIVER AND THE VERDE RIVER.

34 (d) PERENNIAL OR INTERMITTENT PUBLIC WATERS USED FOR RECREATIONAL OR  
35 COMMERCIAL FISH CONSUMPTION.

36 (e) PERENNIAL OR INTERMITTENT PUBLIC WATERS USED FOR WATER-BASED  
37 RECREATION SUCH AS SWIMMING, WADING, BOATING AND OTHER TYPES OF RECREATION  
38 IN AND ON THE WATER.

39 (f) PERENNIAL OR INTERMITTENT WETLANDS ADJACENT TO WATERS ON THE  
40 PROTECTED SURFACE WATERS LIST.

41 (g) PERENNIAL OR INTERMITTENT WATERS OF THE STATE THAT CROSS INTO  
42 ANOTHER STATE, THE REPUBLIC OF MEXICO OR THE RESERVATION OF A FEDERALLY  
43 RECOGNIZED TRIBE.

44 4. THE DIRECTOR MAY ADD ADDITIONAL NON-WOTUS SURFACE WATERS TO THE  
45 PROTECTED SURFACE WATERS LIST IF ALL OF THE FOLLOWING APPLY:

1 (a) THE WATER IS NOT REQUIRED TO BE LISTED UNDER PARAGRAPH 1 OR 3 OF  
2 THIS SUBSECTION.

3 (b) THE WATER IS NOT EXCLUDED UNDER PARAGRAPH 2 OF THIS SUBSECTION.

4 (c) THE ECONOMIC, ENVIRONMENTAL AND SOCIAL BENEFITS OF ADDING THE  
5 WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND SOCIAL COSTS OF EXCLUDING  
6 THE WATER FROM THE LIST.

7 5. THE DIRECTOR SHALL REMOVE ANY ERRONEOUSLY LISTED, NON-WOTUS  
8 WATERS FROM THE PROTECTED SURFACE WATERS LIST WHEN THE WATER IS EXCLUDED  
9 UNDER PARAGRAPH 2 OF THIS SUBSECTION AND SHALL NOT REGULATE DISCHARGES TO  
10 THOSE WATERS IN THE INTERIM.

11 6. THE DIRECTOR SHALL REMOVE NON-WOTUS WATERS FROM THE PROTECTED  
12 SURFACE WATERS LIST WHEN THE WATER IS NOT REQUIRED TO BE LISTED UNDER  
13 PARAGRAPH 3 OF THIS SUBSECTION AND THE ECONOMIC, ENVIRONMENTAL AND SOCIAL  
14 BENEFITS OF REMOVING THE WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND  
15 SOCIAL COSTS OF RETAINING THE WATER ON THE LIST.

16 7. THE DIRECTOR, ON AN EMERGENCY BASIS, MAY ADD A WATER TO THE  
17 PROTECTED SURFACE WATERS LIST IF THE DIRECTOR DISCOVERS AN IMMINENT AND  
18 SUBSTANTIAL DANGER TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, IF THE  
19 WATER WOULD OTHERWISE QUALIFY TO BE ADDED UNDER PARAGRAPH 3 OF THIS  
20 SUBSECTION. NOTWITHSTANDING ANY OTHER LAW, THE EMERGENCY ADDITION SHALL  
21 TAKE EFFECT IMMEDIATELY ON THE DIRECTOR'S DETERMINATION THAT DESCRIBES THE  
22 IMMINENT AND SUBSTANTIAL DANGER IN WRITING. WITHIN THIRTY DAYS AFTER THE  
23 DIRECTOR'S DETERMINATION, THE DEPARTMENT SHALL PUBLISH A NOTICE OF THAT  
24 DETERMINATION IN THE ARIZONA ADMINISTRATIVE REGISTER AND ON THE  
25 DEPARTMENT'S WEBSITE. WATERS ADDED UNDER THIS SUBSECTION SHALL BE  
26 INCORPORATED INTO THE PROTECTED SURFACE WATERS LIST DURING THE NEXT  
27 RULEMAKING THAT FOLLOWS THE ADDITION.

28 Sec. 8. Section 49-222, Arizona Revised Statutes, is amended to  
29 read:

30 49-222. Water quality standards for WOTUS

31 A. Standards for the quality of ~~navigable waters~~ WOTUS shall assure  
32 water quality, if attainable, which provides for protecting the public  
33 health and welfare, and shall enhance the quality of water taking into  
34 consideration its use and value for public water supplies, the propagation  
35 of fish and wildlife and recreational, agricultural, industrial and other  
36 purposes including navigation.

37 B. ~~Not later than January 1, 1990,~~ The director shall adopt  
38 standards for the quality of all ~~navigable waters which~~ WOTUS THAT  
39 establish numeric limitations on the concentrations of each of the toxic  
40 pollutants listed by the administrator pursuant to section 307 of the  
41 clean water act (33 United States Code section 1317).

42 C. In setting numeric standards for the quality of ~~navigable waters~~  
43 WOTUS, the director may consider the effect of local water quality  
44 characteristics on the toxicity of specific pollutants and the varying  
45 sensitivities of local affected aquatic populations to such pollutants,

1 and the extent to which the natural flow of the stream is intermittent or  
2 ephemeral, as a result of which the instream flow consists mostly of  
3 treated wastewater effluent, except that such standards shall not, in any  
4 event, be inconsistent with the clean water act. In applying such  
5 standards the director may establish appropriate mixing zones.

6 Sec. 9. Section 49-225, Arizona Revised Statutes, is amended to  
7 read:

8 49-225. Water quality monitoring

9 A. The director of environmental quality, with the advice and  
10 cooperation of the Arizona department of agriculture and the director of  
11 water resources when appropriate, shall conduct ongoing monitoring of the  
12 waters of the state including the state's ~~navigable waters~~ WOTUS and  
13 aquifers to detect the presence of new and existing pollutants, determine  
14 compliance with applicable water quality standards, determine the  
15 effectiveness of best management practices, agricultural best management  
16 practices and best available demonstrated control technologies, evaluate  
17 the effects of pollutants on public health or the environment and  
18 determine water quality trends.

19 B. The director shall maintain a statewide database of groundwater  
20 and soils sampled for pollutants. All agencies shall submit to the  
21 director, in a timely manner, the results of any groundwater or soils  
22 sampling for pollutants and the results of any groundwater or soils  
23 sampling that detect any pollutants.

24 C. The director shall establish minimum requirements and schedules  
25 for groundwater and soils sampling that will ensure precise and accurate  
26 results. The requirements shall be distributed to all agencies that  
27 conduct sampling. All sampling conducted shall meet the minimum  
28 requirements established pursuant to this subsection.

29 Sec. 10. Section 49-231, Arizona Revised Statutes, is amended to  
30 read:

31 49-231. Definitions

32 In this article, unless the context otherwise requires:

33 1. "Impaired water" means a ~~navigable~~ PROTECTED SURFACE water for  
34 which credible scientific data exists that satisfies the requirements of  
35 section 49-232, and that, IN THE CASE OF WOTUS, demonstrates that the  
36 water should be identified pursuant to 33 United States Code section  
37 1313(d) and the regulations implementing that statute.

38 2. "Surface water quality standard" means a standard adopted for a  
39 ~~navigable~~ PROTECTED SURFACE water pursuant to ~~sections SECTION 49-221 and~~  
40 ~~49-222 and section 303(c) of the clean water act (33 United States Code~~  
41 ~~section 1313(c)) AND, IN THE CASE OF WOTUS, PURSUANT TO SECTION 49-222.~~

42 3. "TMDL implementation plan" means a written strategy to implement  
43 a total maximum daily load that is developed for an impaired water. TMDL  
44 implementation plans may rely on any combination of the following  
45 components that the department determines will result in achieving and

1 maintaining compliance with applicable surface water quality standards in  
2 the most cost-effective and equitable manner:

- 3 (a) Permit limitations.
- 4 (b) Best management practices.
- 5 (c) Education and outreach efforts.
- 6 (d) Technical assistance.
- 7 (e) Cooperative agreements, voluntary measures and incentive-based  
8 programs.
- 9 (f) Load reductions resulting from other legally required programs  
10 or activities.
- 11 (g) Land management programs.
- 12 (h) Pollution prevention planning, waste minimization or pollutant  
13 trading agreements.
- 14 (i) Other measures deemed appropriate by the department.

15 4. "Total maximum daily load" means an estimation of the total  
16 amount of a pollutant from all sources that may be added to a water while  
17 still allowing the water to achieve and maintain applicable surface water  
18 quality standards. Each total maximum daily load shall include  
19 allocations for sources that contribute the pollutant to the water. ~~as~~  
20 ~~required by~~ TOTAL MAXIMUM DAILY LOADS FOR WOTUS SHALL MEET THE  
21 REQUIREMENTS OF section 303(d) of the clean water act (33 United States  
22 Code section 1313(d)) and regulations implementing that statute to achieve  
23 applicable surface water quality standards. TOTAL MAXIMUM DAILY LOADS FOR  
24 NON-WOTUS PROTECTED SURFACE WATERS SHALL NOT BE SUBJECT TO REVIEW,  
25 APPROVAL OR ENFORCEMENT BY THE UNITED STATES ENVIRONMENTAL PROTECTION  
26 AGENCY.

27 Sec. 11. Section 49-232, Arizona Revised Statutes, is amended to  
28 read:

29 49-232. Lists of impaired waters; data requirements; rules

30 A. At least once every five years, the department shall prepare a  
31 list of impaired ~~waters for the purpose of complying~~ WOTUS TO COMPLY with  
32 section 303(d) of the clean water act (33 United States Code section  
33 1313(d)). The department shall provide public notice and allow for  
34 comment on a draft list of impaired ~~waters~~ WOTUS prior to its submission  
35 to the United States environmental protection agency. The department  
36 shall prepare written responses to comments received on the draft list.  
37 The department shall publish the list of impaired ~~waters~~ WOTUS that it  
38 plans to submit initially to the regional administrator and a summary of  
39 the responses to comments on the draft list in the Arizona administrative  
40 register at least forty-five days before submission of the list to the  
41 regional administrator. Publication of the list in the Arizona  
42 administrative register is an appealable agency action pursuant to title  
43 41, chapter 6, article 10 that may be appealed by any party that submitted  
44 written comments on the draft list. If the department receives a notice  
45 of appeal of a listing pursuant to section ~~41-1092, subsection B~~

1 41.1092.03 within forty-five days ~~of~~ AFTER the publication of the list in  
2 the Arizona administrative register, the department shall not include the  
3 challenged listing in its initial submission to the regional  
4 administrator. The department may subsequently submit the challenged  
5 listing to the regional administrator if the listing is upheld in the  
6 director's final administrative decision pursuant to section 41-1092.08,  
7 or if the challenge to the listing is withdrawn prior to a final  
8 administrative decision.

9 B. ON OR BEFORE DECEMBER 31, 2022 AND AT LEAST ONCE EVERY FIVE  
10 YEARS THEREAFTER, THE DEPARTMENT SHALL PREPARE A LIST OF IMPAIRED  
11 NON-WOTUS PROTECTED SURFACE WATERS. THE DEPARTMENT SHALL PROVIDE PUBLIC  
12 NOTICE AND OPPORTUNITY TO COMMENT ON A DRAFT LIST OF IMPAIRED NON-WOTUS  
13 PROTECTED SURFACE WATERS PREPARED UNDER THIS SUBSECTION. THE DEPARTMENT  
14 SHALL PREPARE WRITTEN RESPONSES TO COMMENTS RECEIVED ON THE DRAFT LIST.  
15 THE DEPARTMENT SHALL PUBLISH THE LIST OF IMPAIRED NON-WOTUS PROTECTED  
16 SURFACE WATERS AND A SUMMARY OF THE RESPONSES TO COMMENTS ON THE DRAFT  
17 LIST IN THE ARIZONA ADMINISTRATIVE REGISTER. PUBLICATION OF THE LIST IN  
18 THE ARIZONA ADMINISTRATIVE REGISTER IS AN APPEALABLE AGENCY ACTION  
19 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10 AND MAY BE APPEALED BY ANY  
20 PARTY THAT SUBMITTED WRITTEN COMMENTS ON THE DRAFT LIST.

21 ~~B.~~ C. In determining whether a water is impaired, the department  
22 shall consider only reasonably current credible and scientifically  
23 defensible data that the department has collected or has received from  
24 another source. Results of water sampling or other assessments of water  
25 quality, including physical or biological health, shall be considered  
26 credible and scientifically defensible data only if the department has  
27 determined all of the following:

28 1. Appropriate quality assurance and quality control procedures  
29 were followed and documented in collecting and analyzing the data.

30 2. The samples or analyses are representative of water quality  
31 conditions at the time the data was collected.

32 3. The data consists of an adequate number of samples based on the  
33 nature of the water in question and the parameters being analyzed.

34 4. The method of sampling and analysis, including analytical,  
35 statistical and modeling methods, is generally accepted and validated in  
36 the scientific community as appropriate for use in assessing the condition  
37 of the water.

38 ~~C.~~ D. The department shall adopt by rule the methodology to be  
39 used in identifying waters as impaired. The rules shall specify all of  
40 the following:

41 1. Minimum data requirements and quality assurance and quality  
42 control requirements that are consistent with subsection ~~B.~~ C of this  
43 section and that must be satisfied in order for the data to serve as the  
44 basis for listing and delisting decisions.

1           2. Appropriate sampling, analytical and scientific techniques that  
2 may be used in assessing whether a water is impaired.

3           3. Any statistical or modeling techniques that the department uses  
4 to assess or interpret data.

5           4. Criteria for including and removing waters from the list of  
6 impaired waters, including any implementation procedures developed  
7 pursuant to subsection ~~F~~ G of this section. The criteria for removing a  
8 water from the list of impaired waters shall not be any more stringent  
9 than the criteria for adding a water to that list.

10          ~~D~~ E. In assessing whether a water is impaired, the department  
11 shall consider the data available in light of the nature of the water in  
12 question, including whether the water is an ephemeral water. A water in  
13 which pollutant loadings from naturally occurring conditions alone are  
14 sufficient to cause a violation of applicable surface water quality  
15 standards shall not be listed as impaired.

16          ~~E~~ F. If the department has adopted a numeric surface water  
17 quality standard for a pollutant and that standard is not being exceeded  
18 in a water, the department shall not list the water as impaired based on a  
19 conclusion that the pollutant causes a violation of a narrative or  
20 biological standard unless:

21           1. The department has determined that the numeric standard is  
22 insufficient to protect water quality.

23           2. The department has identified specific reasons that are  
24 appropriate for the water in question, that are based on generally  
25 accepted scientific principles and that support the department's  
26 determination.

27          ~~F~~ G. Before listing a ~~navigable~~ water as impaired based on a  
28 violation of a narrative or biological surface water quality standard and  
29 after providing an opportunity for public notice and comment, the  
30 department shall adopt implementation procedures that specifically  
31 identify the objective basis for determining that a violation of the  
32 narrative or biological criterion exists. A total maximum daily load  
33 designed to achieve compliance with a narrative or biological surface  
34 water quality standard shall not be adopted until the implementation  
35 procedure for the narrative or biological surface water quality standard  
36 has been adopted.

37          ~~G~~ H. On request, the department shall make available to the  
38 public data used to support the listing of a water as impaired and may  
39 charge a reasonable fee to persons requesting the data.

40          ~~H~~ I. By January 1, 2002, the department shall review the list of  
41 waters identified as impaired as of January 1, 2000 to determine whether  
42 the data that supports the listing of those waters complies with this  
43 section. If the data that supports a listing does not comply with this  
44 section, the listed water shall not be included on future lists submitted  
45 to the United States environmental protection agency pursuant to 33 United

1 States Code section 1313(d) unless in the interim data that satisfies the  
2 requirements of this section has been collected or received by the  
3 department.

4 ~~i.~~ J. The department shall add a water to or remove a water from  
5 the list using the process described in ~~section 49-232~~, subsection A OR B  
6 OF THIS SECTION outside of the normal listing cycle if it collects or  
7 receives credible and scientifically defensible data that satisfies the  
8 requirements of this section and that demonstrates that the current  
9 quality of the water is such that it should be removed from or added to  
10 the list. A listed water may no longer warrant classification as impaired  
11 or an unlisted water may be identified as impaired if the applicable  
12 surface water quality standards, implementation procedures or designated  
13 uses have changed or if there is a change in water quality.

14 K. THE DIRECTOR SHALL APPLY THE RULES ADOPTED PURSUANT TO  
15 SUBSECTION D OF THIS SECTION FOR IDENTIFICATION OF IMPAIRED WATERS TO  
16 NON-WOTUS PROTECTED SURFACE WATERS UNTIL SPECIFICALLY CHANGED BY RULE.  
17 THE DIRECTOR SHALL AMEND RULES TO UPDATE THE IMPAIRED WATERS  
18 IDENTIFICATION RULES WITHIN ONE YEAR AFTER ADOPTING SURFACE WATER QUALITY  
19 STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS PURSUANT TO SECTION  
20 49-221, SUBSECTION A, PARAGRAPH 2.

21 Sec. 12. Section 49-233, Arizona Revised Statutes, is amended to  
22 read:

23 49-233. Priority ranking and schedule

24 A. Each list developed by the department pursuant to section  
25 49-232 shall contain a priority ranking of ~~navigable waters~~ WOTUS  
26 identified as impaired and for which total maximum daily loads are  
27 required pursuant to section 49-234 and a schedule for the development of  
28 all required total maximum daily loads.

29 B. In the first list submitted to the United States environmental  
30 protection agency after ~~the effective date of this article~~ JULY 18, 2000,  
31 the schedule shall be sufficient to ensure that all required total maximum  
32 daily loads will be developed within fifteen years ~~of~~ AFTER the date the  
33 list is approved by the environmental protection agency. Total maximum  
34 daily loads that are required to be developed for ~~navigable waters~~ WOTUS  
35 that are included for the first time on subsequent lists shall be  
36 developed within fifteen years of the initial inclusion of the water on  
37 the list.

38 C. As part of the ~~rule-making~~ RULEMAKING prescribed by section  
39 49-232, subsection ~~e~~ D, the department shall identify the factors that it  
40 will use to prioritize ~~navigable waters~~ WOTUS that require development of  
41 total maximum daily loads. At a minimum and to the extent relevant data  
42 is available, the department shall consider the following factors in  
43 prioritizing ~~navigable waters~~ WOTUS for development of total maximum daily  
44 loads:

1. The designated uses of the ~~navigable water~~ WOTUS.

- 1           2. The type and extent of risk from the impairment to human health
- 2           or aquatic life.
- 3           3. The degree of public interest and support, or its lack.
- 4           4. The nature of the ~~navigable water~~ WOTUS, including whether it is
- 5           an ephemeral, intermittent or effluent-dependent water.
- 6           5. The pollutants causing the impairment.
- 7           6. The severity, magnitude and duration of the violation of the
- 8           applicable surface water quality standard.
- 9           7. The seasonal variation caused by natural events such as storms
- 10          or weather patterns.
- 11          8. Existing treatment levels and management practices.
- 12          9. The availability of effective and economically feasible
- 13          treatment techniques, management practices or other pollutant loading
- 14          reduction measures.
- 15          10. The recreational and economic importance of the water.
- 16          11. The extent to which the impairment is caused by discharges or
- 17          activities that have ceased.
- 18          12. The extent to which natural sources contribute to the
- 19          impairment.
- 20          13. Whether the water is accorded special protection under federal
- 21          or state water quality law.
- 22          14. Whether action that is taken or that is likely to be taken under
- 23          other programs, including voluntary programs, is likely to make
- 24          significant progress toward achieving applicable standards even if a total
- 25          maximum daily load is not developed.
- 26          15. The time expected to be required to achieve compliance with
- 27          applicable surface water quality standards.
- 28          16. The availability of documented, effective analytical tools for
- 29          developing a total maximum daily load for the water with reasonable
- 30          accuracy.
- 31          17. Department resources and programmatic needs.

32          Sec. 13. Section 49-234, Arizona Revised Statutes, is amended to  
33          read:

34            49-234. Total maximum daily loads; implementation plans

35          A. The department shall develop total maximum daily loads for those  
36          ~~navigable~~ WOTUS listed as impaired pursuant to this article and for which  
37          total maximum daily loads are required to be adopted pursuant to 33 United  
38          States Code section 1313(d) and the regulations implementing that statute  
39          OR THAT THE DEPARTMENT OTHERWISE DETERMINES ARE REQUIRED TO RESTORE AN  
40          IMPAIRED WATER. The department may estimate total maximum daily loads for  
41          ~~navigable~~ WOTUS not listed as impaired pursuant to this article, ~~for the~~  
42          ~~purposes of developing~~ TO DEVELOP information to satisfy the requirements  
43          of 33 United States Code section 1313(d)(3), ~~only~~ only after it has developed  
44          total maximum daily loads for all ~~navigable waters~~ WOTUS identified as

1 impaired pursuant to this article or if necessary to support permitting of  
2 new point source discharges.

3 B. In developing total maximum daily loads, the department shall  
4 use only statistical and modeling techniques that are properly validated  
5 and broadly accepted by the scientific community. The modeling technique  
6 may vary based on the type of water and the quantity and quality of  
7 available data that meets the quality assurance and quality control  
8 requirements of section 49-232. The department may establish the  
9 statistical and modeling techniques in rules adopted pursuant to section  
10 49-232, subsection ~~C~~ D.

11 C. Each total maximum daily load shall:

12 1. Be based on data and methodologies that comply with section  
13 49-232.

14 2. Be established at a level that will achieve and maintain  
15 compliance with applicable surface water quality standards.

16 3. Include a reasonable margin of safety that takes into account  
17 any lack of knowledge concerning the relationship between effluent  
18 limitations and water quality. The margin of safety shall not be used as  
19 a substitute for adequate data when developing the total maximum daily  
20 load.

21 4. Account for seasonal variations that may include setting total  
22 maximum daily loads that apply on a seasonal basis.

23 D. For each impaired water, **EITHER OF THE FOLLOWING APPLIES:**

24 1. **FOR EACH IMPAIRED WOTUS**, the department shall prepare a draft  
25 estimate of the total amount of each pollutant that causes the impairment  
26 from all sources and that may be added to the ~~navigable water~~ WOTUS while  
27 still allowing the ~~navigable water~~ WOTUS to achieve and maintain  
28 applicable surface water quality standards. In addition, the department  
29 shall determine draft allocations among the contributing sources that are  
30 sufficient to achieve the total loadings. The department shall provide  
31 public notice and allow for comment on each draft estimate and draft  
32 allocation and shall prepare written responses to comments received on the  
33 draft estimates and draft allocations. The department shall publish the  
34 determinations of total pollutant loadings that will not result in  
35 impairment and the draft allocations among the contributing sources that  
36 are sufficient to achieve the total loading that it intends to submit  
37 initially to the regional administrator, along with a summary of the  
38 responses to comments on the estimated loadings and allocations, in the  
39 Arizona administrative register at least forty-five days before submission  
40 of the loadings and allocations to the regional administrator.  
41 Notwithstanding this subsection, draft allocations shall be submitted to  
42 the regional administrator only if that submission is required by the  
43 rules that implement 33 United States Code section 1313(d).

44 2. **FOR NON-WOTUS IMPAIRED WATERS, THE DEPARTMENT MAY PREPARE A**  
45 **DRAFT ESTIMATE OF THE TOTAL AMOUNT OF EACH POLLUTANT THAT CAUSES THE**

1 IMPAIRMENT FROM ALL SOURCES AND THAT MAY BE ADDED TO THE WATER WHILE STILL  
2 ALLOWING THE WATER TO ACHIEVE AND MAINTAIN APPLICABLE SURFACE WATER  
3 QUALITY STANDARDS. IF THE DEPARTMENT CHOOSES TO PREPARE A DRAFT ESTIMATE  
4 FOR A NON-WOTUS IMPAIRED WATER, THE DEPARTMENT SHALL DO ALL OF THE  
5 FOLLOWING:

6 (a) DETERMINE DRAFT ALLOCATIONS AMONG CONTRIBUTING SOURCES THAT ARE  
7 SUFFICIENT TO ACHIEVE TOTAL LOADINGS.

8 (b) PROVIDE PUBLIC NOTICE AND ALLOW FOR COMMENT ON THE DRAFT  
9 ESTIMATES AND DRAFT ALLOCATIONS.

10 (c) PREPARE WRITTEN RESPONSES TO COMMENTS RECEIVED ON THE DRAFT  
11 ESTIMATES AND DRAFT ALLOCATIONS.

12 (d) PUBLISH THE DETERMINATIONS OF TOTAL POLLUTANT LOADINGS THAT  
13 WILL NOT RESULT IN IMPAIRMENT AND THE DRAFT ALLOCATIONS AMONG THE  
14 CONTRIBUTING SOURCES THAT ARE SUFFICIENT TO ACHIEVE THE TOTAL LOADING,  
15 ALONG WITH A SUMMARY OF THE RESPONSES TO COMMENTS ON THE ESTIMATED  
16 LOADINGS AND ALLOCATIONS, IN THE ARIZONA ADMINISTRATIVE REGISTER.

17 E. Publication of the loadings and allocations in the Arizona  
18 administrative register is an appealable agency action pursuant to title  
19 41, chapter 6, article 10 that may be appealed by any party that submitted  
20 written comments on the estimated loadings and allocations. IN THE CASE  
21 OF WOTUS, if the department receives a notice of appeal of a loading and  
22 allocation pursuant to section 41-1092.03 within forty-five days ~~of~~ AFTER  
23 the publication of the loading and allocations in the Arizona  
24 administrative register, the department shall not submit the challenged  
25 loading and allocations to the regional administrator until either the  
26 challenge to the loading and allocation is withdrawn or the director has  
27 made a final administrative decision pursuant to section 41-1092.08.

28 F. The department shall make reasonable and equitable allocations  
29 among sources when developing total maximum daily loads. At a minimum,  
30 the department shall consider the following factors in making allocations:

31 1. The environmental, economic and technological feasibility of  
32 achieving the allocation.

33 2. The cost and benefit associated with achieving the allocation.

34 3. Any pollutant loading reductions that are reasonably expected to  
35 be achieved as a result of other legally required actions or voluntary  
36 measures.

37 G. For each total maximum daily load, the department shall  
38 establish a TMDL implementation plan that explains how the allocations and  
39 any reductions in existing pollutant loadings will be achieved. Any  
40 reductions in loadings from nonpoint sources shall be achieved  
41 voluntarily. The department shall provide for public notice and comment on  
42 each TMDL implementation plan. Any sampling or monitoring components of a  
43 TMDL implementation plan shall comply with section 49-232.

44 H. Each TMDL implementation plan shall provide the time frame in  
45 which compliance with applicable surface water quality standards is

1 expected to be achieved. The plan may include a phased process with  
2 interim targets for load reductions. Longer time frames are appropriate in  
3 situations involving multiple dischargers, technical, legal or economic  
4 barriers to achieving necessary load reductions, scientific uncertainty  
5 regarding data quality or modeling, significant loading from natural  
6 sources or significant loading resulting from discharges or activities  
7 that have already ceased.

8 I. For ~~navigable~~ IMPAIRED waters that are impaired due in part to  
9 historical factors that are difficult to address, including contaminated  
10 sediments, the department shall consider those historical factors in  
11 determining allocations for existing point source discharges of the  
12 pollutant or pollutants that cause the impairment. In developing total  
13 maximum daily loads for those ~~navigable~~ waters, the department shall use a  
14 phased approach in which expected long-term loading reductions from the  
15 historical sources are considered in establishing short-term allocations  
16 for the point sources. While total maximum daily loads and TMDL  
17 implementation plans are being completed, any permits issued for the point  
18 sources are deemed consistent with this article if the permits require  
19 reasonable reductions in the discharges of the pollutants causing the  
20 impairment and are not required to include additional reductions if those  
21 reductions would not significantly contribute to attainment of surface  
22 water quality standards.

23 J. After a total maximum daily load and a TMDL implementation plan  
24 have been adopted for a ~~navigable~~ PROTECTED SURFACE water, the department  
25 shall review the status of the ~~navigable~~ PROTECTED SURFACE water at least  
26 once every five years to determine if compliance with applicable surface  
27 water quality standards has been achieved. If compliance with applicable  
28 surface water quality standards has not been achieved, the department  
29 shall evaluate whether modification of the total maximum daily load or  
30 TMDL implementation plan is required.

31 Sec. 14. Section 49-242, Arizona Revised Statutes, is amended to  
32 read:

33 49-242. Procedural requirements for individual permits;  
34 annual registration of permittees; fee

35 A. The director shall prescribe by rule requirements for issuing,  
36 denying, suspending or modifying individual permits, including  
37 requirements for submitting notices, permit applications and any  
38 additional information necessary to determine whether an individual permit  
39 should be issued, and shall prescribe conditions and requirements for  
40 individual permits.

41 B. Each owner of an injection well, a land treatment facility, a  
42 dry well, an on-site wastewater treatment facility with a capacity of more  
43 than three thousand gallons per day, a recharge facility or a facility  
44 that discharges to ~~navigable~~ PROTECTED SURFACE waters to whom an  
45 individual or area-wide permit is issued shall register the permit with

1 the director each year and pay an annual registration fee for each permit  
2 based on the total daily discharge of pollutants pursuant to subsection E  
3 of this section.

4 C. Each owner of a surface impoundment, a facility that adds a  
5 pollutant to a salt dome formation, salt bed formation, underground cave  
6 or mine, a mine tailings pile or pond, a mine leaching operation, a sewage  
7 or sludge pond or a wastewater treatment facility to whom an individual or  
8 area-wide permit is issued shall register the permit with the director  
9 each year and pay an annual registration fee for each permit based on the  
10 total daily influent of pollutants pursuant to subsection E of this  
11 section.

12 D. Pending the issuance of individual or area-wide aquifer  
13 protection permits, each owner of a facility that is prescribed in  
14 subsection B or C of this section that is operating on September 27, 1990  
15 pursuant to the filing of a notice of disposal or a groundwater quality  
16 protection permit issued under title 36 shall register the notice of  
17 disposal or the permit with the director each year and shall pay an annual  
18 registration fee for each notice of disposal or permit based on the total  
19 daily influent or discharge of pollutants pursuant to subsection E of this  
20 section.

21 E. Only for a ~~one-time rule making~~ ONETIME RULEMAKING after ~~the~~  
22 ~~effective date of this amendment to this section~~ JULY 29, 2010, the  
23 director shall establish by rule an annual registration fee for facilities  
24 prescribed by subsections B, C and D of this section. The fee shall be  
25 measured in part by the amount of discharge or influent per day from the  
26 facility. After the ~~one-time rule making~~ ONETIME RULEMAKING, the director  
27 shall not increase those fees by rule without specific statutory authority  
28 for the increase.

29 F. For a site with more than one permit subject to the requirements  
30 of this section, the owner or operator of the facility at that site shall  
31 pay the annual registration fee prescribed pursuant to subsection E of  
32 this section based on the permit that covers the greatest gallons of  
33 discharge or influent per day plus one-half of the annual registration fee  
34 for gallons of discharge or influent for each additional permit.

35 G. The director shall prescribe the procedures to register the  
36 notice of disposal or permit and collect the fee under this section. The  
37 director shall deposit, pursuant to sections 35-146 and 35-147, all monies  
38 collected under this section in the water quality fee fund established by  
39 section 49-210 and may authorize expenditures from the fund to pay the  
40 reasonable and necessary costs of administering the registration program.

41 Sec. 15. Section 49-245.01, Arizona Revised Statutes, is amended to  
42 read:

43 49-245.01. Storm water general permit

44 A. A general permit is issued for facilities used solely for the  
45 management of storm water and that are regulated by the clean water act OR

1 ARTICLE 3.1 OF THIS CHAPTER, including catchments, impoundments and sumps,  
2 provided the following conditions are met:

3 1. The owner or operator of the facility has obtained a national  
4 pollutant discharge elimination system permit issued pursuant to the clean  
5 water act OR AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT  
6 UNDER ARTICLE 3.1 OF THIS CHAPTER for any storm water discharges at the  
7 facility, or that the facility has applied, and not been denied coverage,  
8 for ~~this type of permit~~ THESE TYPES OF PERMITS for any storm water  
9 discharges at the facility.

10 2. The owner or operator notifies the director that the facility  
11 has met the requirements of paragraph 1 of this subsection.

12 3. The owner or operator of the facility has in place any required  
13 storm water pollution prevention plan.

14 B. If the director determines that discharges of storm water from a  
15 facility or facilities covered by this general permit are causing a  
16 violation of aquifer water quality standards at the applicable point of  
17 compliance, the director may revoke the general permit of the facility or  
18 facilities or may require that an individual permit be obtained pursuant  
19 to section 49-243. If the director determines that discharges of storm  
20 water from a facility or facilities covered by this general permit, with  
21 reasonable probability, may cause a violation of aquifer water quality  
22 standards at the applicable point of compliance, the director may require  
23 a facility or facilities covered by the general permit to obtain an  
24 individual permit pursuant to section 49-243.

25 Sec. 16. Section 49-245.02, Arizona Revised Statutes, is amended to  
26 read:

27 49-245.02. General permit for certain discharges associated  
28 with man-made bodies of water

29 A. A general permit is issued for the following discharges:

30 1. Disposal in vadose zone injection wells of storm water mixed  
31 with reclaimed wastewater or groundwater, or both, from man-made bodies of  
32 water associated with golf courses, parks and residential common areas,  
33 provided that:

34 (a) The vadose zone injection wells are registered pursuant to  
35 section 49-332.

36 (b) The discharge occurs only in response to storm events.

37 (c) With the exception of the aquifer water quality standard for  
38 microbiological contaminants, the reclaimed wastewater meets aquifer water  
39 quality standards before being placed into the body of water, as  
40 documented by a water quality analysis submitted with the vadose zone  
41 injection well registration. The owner or operator of the vadose zone  
42 injection wells shall demonstrate continued compliance with this  
43 subdivision by submitting to the department the results of any monitoring  
44 required as part of an aquifer protection permit or wastewater reuse  
45 permit for any facility providing reclaimed wastewater to the man-made

1 body of water. For purposes of this general permit, monitoring shall be  
2 conducted at least semiannually. The monitoring results shall be  
3 submitted to the department semiannually beginning six months after  
4 registration made PURSUANT to subdivision (a) of this paragraph.

5 (d) The vadose zone injection wells shall be located at least one  
6 hundred feet from any water supply well.

7 (e) A vertical separation of forty feet shall be provided between  
8 the bottom of the vadose zone injection wells and the water table to allow  
9 the aquifer water quality standard for microbiological contaminants to be  
10 met in the uppermost aquifer.

11 (f) The vadose zone injection wells are not used for any other  
12 purpose.

13 2. Subsurface discharges from man-made bodies of water associated  
14 with golf courses, parks and residential common areas, provided that:

15 (a) The body of water contains only groundwater, storm water or  
16 reclaimed wastewater, or a combination thereof.

17 (b) The reclaimed wastewater complies with the terms of a  
18 wastewater reuse permit before being placed into the body of water.

19 (c) The body of water is lined and maintained to achieve a  
20 hydraulic conductivity of 10<sup>-7</sup> cm/sec or less.

21 3. Point source discharges to ~~waters of the United States~~ PROTECTED  
22 SURFACE WATERS from man-made bodies of water associated with golf courses,  
23 parks and residential common areas that contain only groundwater, storm  
24 water or reclaimed wastewater, or a combination thereof, provided that:

25 (a) The discharges are subject to a valid national pollutant  
26 discharge elimination system permit OR AN ARIZONA POLLUTANT DISCHARGE  
27 ELIMINATION SYSTEM PERMIT UNDER ARTICLE 3.1 OF THIS CHAPTER.

28 (b) The discharges occur only in response to storm events.

29 (c) With the exception of the aquifer water quality standard for  
30 microbiological contaminants, the reclaimed wastewater meets aquifer water  
31 quality standards before being placed into the body of water.

32 B. If the director determines that discharges from a facility  
33 covered by this general permit are causing a violation of aquifer water  
34 quality standards, the director may revoke the general permit of the  
35 facility or may require that an individual permit be obtained pursuant to  
36 section 49-243. If the director determines that discharges from a  
37 facility covered by this general permit may cause, with reasonable  
38 probability, a violation of aquifer water quality standards, the director  
39 may require the facility to obtain an individual permit pursuant to  
40 section 49-243

41 Sec. 17. Section 49-250, Arizona Revised Statutes, is amended to  
42 read:

43 49-250. Exemptions

44 A. The director may, by rule, MAY exempt specifically described  
45 classes or categories of facilities from the aquifer protection permit

1 requirements of this article on a finding either that there is no  
2 reasonable probability of degradation of the aquifer or that aquifer water  
3 quality will be maintained and protected because the discharges from the  
4 facilities are regulated under other federal or state programs that  
5 provide the same or greater aquifer water quality protection as provided  
6 by this article.

7 B. The following are exempt from the aquifer protection permit  
8 requirement of this article:

9 1. Household and domestic activities.

10 2. Household gardening, lawn watering, lawn care, landscape  
11 maintenance and related activities.

12 3. The noncommercial use of consumer products generally available  
13 to and used by the public.

14 4. Ponds used for watering livestock and wildlife.

15 5. Mining overburden returned to the excavation site including any  
16 common material that has been excavated and removed from the excavation  
17 site and has not been subjected to any chemical or leaching agent or  
18 process of any kind.

19 6. Facilities used solely for surface transportation or storage of  
20 groundwater, surface water for beneficial use or reclaimed water that is  
21 regulated pursuant to section 49-203, subsection A, paragraph ~~6~~ 7 for  
22 beneficial use.

23 7. Discharge to a community sewer system.

24 8. Facilities that are required to obtain a permit for the direct  
25 reuse of reclaimed water.

26 9. Leachate resulting from the direct, natural infiltration of  
27 precipitation through undisturbed regolith or bedrock if pollutants are  
28 not added to the leachate as a result of any material or activity placed  
29 or conducted by man on the ground surface.

30 10. Surface impoundments used solely to contain storm runoff, except  
31 for surface impoundments regulated by the federal clean water act **OR**  
32 **ARTICLE 3.1 OF THIS CHAPTER.**

33 11. Closed facilities. However, if the facility ever resumes  
34 operation the facility shall obtain an aquifer protection permit and the  
35 facility shall be treated as a new facility for purposes of section  
36 49-243.

37 12. Facilities for the storage of water pursuant to title 45,  
38 chapter 3.1 unless reclaimed water is added.

39 13. Facilities using central Arizona project water for underground  
40 storage and recovery projects under title 45, chapter 3.1, article 6.

41 14. Water storage at a groundwater saving facility that has been  
42 permitted under title 45, chapter 3.1.

43 15. Application of water from any source, including groundwater,  
44 surface water or wastewater, to grow agricultural crops or for landscaping  
45 purposes, except as provided in section 49-247.

1 16. Discharges to a facility that is exempt pursuant to paragraph 6  
2 **OF THIS SUBSECTION** if those discharges are regulated pursuant to 33 United  
3 States Code section 1342 **OR ARTICLE 3.1 OF THIS CHAPTER**.

4 17. Solid waste and special waste facilities ~~when~~ **IF** rules  
5 addressing aquifer protection are adopted by the director pursuant to  
6 section 49-761 or 49-855 and those facilities obtain plan approval  
7 pursuant to those rules. This exemption shall ~~only~~ **ONLY** if the  
8 director determines that aquifer water quality standards will be  
9 maintained and protected because the discharges from those facilities are  
10 regulated under rules adopted pursuant to section 49-761 or 49-855 that  
11 provide aquifer water quality protection that is equal to or greater than  
12 aquifer water quality protection provided pursuant to this article.

13 18. Facilities used in:

14 (a) Corrective actions taken pursuant to chapter 6, article 1 of  
15 this title in response to a release of a regulated substance as defined in  
16 section 49-1001 except for those off-site facilities that receive for  
17 treatment or disposal materials that are contaminated with a regulated  
18 substance and that are received as part of a corrective action.

19 (b) Response or remedial actions undertaken pursuant to article 5  
20 of this chapter or pursuant to CERCLA.

21 (c) Corrective actions taken pursuant to chapter 5, article 1 of  
22 this title or the resource conservation and recovery act of 1976, as  
23 amended (42 United States Code sections 6901 through 6992).

24 (d) Other remedial actions that have been reviewed and approved by  
25 the appropriate governmental authority and taken pursuant to applicable  
26 federal or state laws.

27 19. Municipal solid waste landfills as defined in section 49-701  
28 that have solid waste facility plan approval pursuant to section 49-762.

29 20. Storage, treatment or disposal of inert material.

30 21. Structures that are designed and constructed not to discharge  
31 and that are built on an impermeable barrier that can be visually  
32 inspected for leakage.

33 22. Pipelines and tanks designed, constructed, operated and  
34 regularly maintained so as not to discharge.

35 23. Surface impoundments and dry wells that are used to contain  
36 storm water in combination with discharges from one or more of the  
37 following activities or sources:

38 (a) Firefighting system testing and maintenance.

39 (b) Potable water sources, including waterline flushings.

40 (c) Irrigation drainage and lawn watering.

41 (d) Routine external building wash down without detergents.

42 (e) Pavement wash water ~~where~~ **IF** no spills or leaks of toxic or  
43 hazardous material have occurred unless all spilled material has first  
44 been removed and no detergents have been used.

1 (f) Air conditioning, compressor and steam equipment condensate  
2 that has not contacted a hazardous or toxic material.

3 (g) Foundation or footing drains in which flows are not  
4 contaminated with process materials.

5 (h) Occupational safety and health administration or mining safety  
6 and health administration safety equipment.

7 24. Industrial wastewater treatment facilities designed, constructed  
8 and operated as required by section 49-243, subsection B, paragraph 1 and  
9 using a treatment system approved by the director to treat wastewater to  
10 meet aquifer water quality standards prior to discharge, if that water is  
11 stored at a groundwater storage facility pursuant to title 45,  
12 chapter 3.1.

13 25. Any point source discharge caused by a storm event and  
14 authorized in a permit issued pursuant to section 402 of the clean water  
15 act OR AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT UNDER  
16 ARTICLE 3.1 OF THIS CHAPTER.

17 26. Except for class V wells, any underground injection well covered  
18 by a permit issued under article 3.3 of this chapter or under 42 United  
19 State STATES Code section 300h-1(c). This exemption does not apply until  
20 the date that the United States environmental protection agency approves  
21 the department's underground injection control permit program established  
22 pursuant to article 3.3 of this chapter.

23 Sec. 18. Section 49-255, Arizona Revised Statutes, is amended to  
24 read:

25 49-255. Definitions

26 In this article, unless the context otherwise requires:

27 1. "AZPDES" means the Arizona pollutant discharge elimination  
28 system program as adopted under section 402(b) of the clean water act FOR  
29 WOTUS AND UNDER SECTION 49-255.04 FOR NON-WOTUS PROTECTED SURFACE WATER.

30 2. "Discharge":

31 (a) Means any addition of any pollutant to ~~navigable~~ PROTECTED  
32 SURFACE waters from any point source.

33 (b) DOES NOT INCLUDE THE ADDITION OF DREDGED MATERIAL OR FILL  
34 MATERIAL TO NON-WOTUS PROTECTED SURFACE WATERS.

35 3. "Indirect discharge" means EITHER OF THE FOLLOWING:

36 (a) The introduction of pollutants into a publicly owned treatment  
37 works from any nondomestic source that is regulated under section 307(b),  
38 (c) or (d) of the clean water act.

39 (b) FOR A PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGES TO  
40 NON-WOTUS PROTECTED SURFACE WATERS, THE INTRODUCTION OF POLLUTANTS FROM  
41 ANY NONDOMESTIC SOURCE THAT WOULD BE REGULATED UNDER SECTION 307(b), (c)  
42 OR (d) OF THE CLEAN WATER ACT IF THE PUBLICLY OWNED TREATMENT WORKS WERE  
43 TO DISCHARGE TO A WOTUS.

44 4. "Industrial user" means a source of indirect discharge.

1           5. "Publicly owned treatment works" means a treatment works owned  
2 by this state or a municipality of this state as defined in section 502(4)  
3 of the clean water act **OR THAT DISCHARGES TO A PROTECTED SURFACE WATER.**

4           6. "Sewage sludge":

5           (a) Means solid, semisolid or liquid residue that is generated  
6 during the treatment of domestic sewage in a treatment works.

7           (b) Includes domestic septage, scum or solids that are removed in  
8 primary, secondary or advanced wastewater treatment processes, and any  
9 material derived from sewage sludge.

10          (c) Does not include ash that is generated during the firing of  
11 sewage sludge in a sewage sludge incinerator or grit and screenings that  
12 are generated during preliminary treatment of domestic sewage in a  
13 treatment works.

14          7. "Treatment works" means any devices and systems that are used in  
15 the storage, treatment, recycling and reclamation of municipal sewage or  
16 industrial wastes of a liquid nature, the elements essential to providing  
17 a reliable recycled supply such as standby treatment units and clear well  
18 facilities, and any works that will be an integral part of the treatment  
19 process or that are used for residues resulting from that treatment. For  
20 the ~~purposes of the~~ programs required by sections 49-255.02 and 49-255.03,  
21 treatment works include intercepting sewers, outfall sewers, sewage  
22 collection systems, pumping, power and other equipment and any  
23 appurtenances, extensions, improvements, remodeling, additions and  
24 alterations.

25          8. "Upset":

26          (a) Means an exceptional incident in which there is unintentional  
27 and temporary noncompliance with technology-based permit discharge  
28 limitations because of factors that are beyond the reasonable control of  
29 the permittee.

30          (b) Does not include noncompliance to the extent that it is caused  
31 by operational error, improperly designed treatment facilities, inadequate  
32 treatment facilities, lack of preventive maintenance or careless or  
33 improper operation.

34          Sec. 19. Section 49-255.01, Arizona Revised Statutes, is amended to  
35 read:

36          49-255.01. Arizona pollutant discharge elimination system  
37 program; rules and standards; affirmative  
38 defense; fees; general permit; exemption from  
39 termination

40          A. A person shall not discharge except under either of the  
41 following conditions:

42           1. In conformance with a permit that is issued or authorized under  
43 this article **OR RULES AUTHORIZED UNDER SECTION 49-203, SUBSECTION A,**  
44 **PARAGRAPH 2.**

1           2. Pursuant to a permit that is issued or authorized by the United  
2 States environmental protection agency until a permit that is issued or  
3 authorized under this article takes effect.

4           B. The director shall adopt rules to establish an AZPDES permit  
5 program FOR DISCHARGES TO WOTUS consistent with the requirements of  
6 sections 402(b) and 402(p) of the clean water act. This program shall  
7 include requirements to ensure compliance with section 307 and  
8 requirements for the control of discharges consistent with sections 318  
9 and 405(a) of the clean water act. The director shall not adopt any  
10 requirement FOR WOTUS that is more stringent than ~~or conflicts with~~ any  
11 requirement of the clean water act. THE DIRECTOR SHALL NOT ADOPT ANY  
12 REQUIREMENT THAT CONFLICTS WITH ANY REQUIREMENT OF THE CLEAN WATER ACT.  
13 The director may adopt federal rules pursuant to section 41-1028 or may  
14 adopt rules to reflect local environmental conditions to the extent that  
15 the rules are consistent with and ~~no~~ NOT more stringent than the clean  
16 water act and this article.

17           C. The rules adopted by the director UNDER SUBSECTION B OF THIS  
18 SECTION shall provide for:

19           1. Issuing, authorizing, denying, modifying, suspending or revoking  
20 individual or general permits.

21           2. Establishment of permit conditions, discharge limitations and  
22 standards of performance as prescribed by section 49-203, subsection A,  
23 paragraph ~~7, 8~~ including ~~case by case~~ CASE-BY-CASE effluent limitations  
24 that are developed in a manner consistent with 40 Code of Federal  
25 Regulations section 125.3(c).

26           3. Modifications and variances as allowed by the clean water act.

27           4. Other provisions necessary for maintaining state program  
28 authority under section 402(b) of the clean water act.

29           D. This article does not affect the validity of any existing rules  
30 that are adopted by the director and that are equivalent to and consistent  
31 with the national pollutant discharge elimination system program  
32 authorized under section 402 of the clean water act until new rules for  
33 AZPDES discharges are adopted pursuant to this article.

34           E. An upset constitutes an affirmative defense to any  
35 administrative, civil or criminal enforcement action brought for  
36 noncompliance with technology-based permit discharge limitations if the  
37 permittee complies with all of the following:

38           1. The permittee demonstrates through properly signed  
39 contemporaneous operating logs or other relevant evidence that:

40           (a) An upset occurred and that the permittee can identify the  
41 specific cause of the upset.

42           (b) The permitted facility was being properly operated at the time  
43 of the upset.

1 (c) If the upset causes the discharge to exceed any discharge  
2 limitation in the permit, the permittee submitted notice to the department  
3 within twenty-four hours ~~of~~ AFTER the upset.

4 (d) The permittee has taken appropriate remedial measures including  
5 all reasonable steps to minimize or prevent any discharge or sewage sludge  
6 use or disposal that is in violation of the permit and that has a  
7 reasonable likelihood of adversely affecting human health or the  
8 environment.

9 2. In any administrative, civil or criminal enforcement action, the  
10 permittee shall prove, by a preponderance of the evidence, the occurrence  
11 of an upset condition.

12 F. Compliance with a permit issued pursuant to this article shall  
13 be deemed compliance with both of the following:

14 1. All requirements in this article or rules adopted pursuant to  
15 this article relating to state implementation of sections 301, 302, 306  
16 and 307 of the clean water act, except for any standard that is imposed  
17 under section 307 of the clean water act for a toxic pollutant that is  
18 injurious to human health.

19 2. Limitations for pollutants in ~~navigable waters~~ WOTUS adopted  
20 pursuant to sections 49-221 and 49-222, if the discharge of the pollutant  
21 is specifically limited in a permit issued pursuant to this article or the  
22 pollutant was specifically identified as present or potentially present in  
23 facility discharges during the application process for the permit.

24 G. Notwithstanding section 49-203, subsection D, permits that are  
25 issued under this article shall not be combined with permits issued under  
26 article 3 of this chapter.

27 H. The decision of the director to issue or modify a permit takes  
28 effect on issuance if there were no changes requested in comments that  
29 were submitted on the draft permit unless a later effective date is  
30 specified in the decision. In all other cases, the decision of the  
31 director to issue, deny, modify, suspend or revoke a permit takes effect  
32 thirty days after the decision is served on the permit applicant, unless  
33 either of the following applies:

34 1. Within the ~~thirty day~~ THIRTY-DAY period, an appeal is filed with  
35 the water quality appeals board pursuant to section 49-323.

36 2. A later effective date is specified in the decision.

37 I. In addition to other reservations of rights provided by this  
38 chapter, ~~nothing in~~ this article ~~shall~~ DOES NOT impair or affect rights or  
39 the exercise of rights to water claimed, recognized, permitted,  
40 certificated, adjudicated or decreed pursuant to state or other law.

41 J. Only for a ~~one-time rule making~~ ONETIME RULEMAKING after July  
42 29, 2010, the director shall establish by rule fees, including maximum  
43 fees, for processing, issuing and denying an application for a permit  
44 pursuant to this section. After the ~~one-time rule making~~ ONETIME  
45 RULEMAKING, the director shall not increase those fees by rule without

1 specific statutory authority for the increase. Monies collected pursuant  
2 to this section shall be deposited, pursuant to sections 35-146 and  
3 35-147, in the water quality fee fund established by section 49-210.

4 K. Any permit conditions concerning threatened or endangered  
5 species shall be limited to those required by the endangered species act.

6 L. When developing a general permit for discharges of storm water  
7 from construction activity, the director shall provide for reduced control  
8 measures at sites that retain storm water in a manner that eliminates  
9 discharges from the site, except for the occurrence of an extreme event.  
10 Reduced control measures shall be available if all of the following  
11 conditions are met:

12 1. The nearest downstream receiving water is ephemeral and the  
13 construction site is a sufficient distance from a water warranting  
14 additional protection as described in the general permit.

15 2. The construction activity occurs on a site designed so that all  
16 storm water generated by disturbed areas of the site exclusive of public  
17 rights-of-way is directed to one or more retention basins that are  
18 designed to retain the runoff from an extreme event. For the purposes of  
19 this subsection, "extreme event" means a rainfall event that meets or  
20 exceeds the local one hundred-year, two-hour storm event as calculated by  
21 an Arizona registered professional engineer using industry practices.

22 3. The owner or operator complies with good housekeeping measures  
23 included in the general permit.

24 4. The owner or operator maintains the capacity of the retention  
25 basins.

26 5. Construction conforms to the standards prescribed by this  
27 section.

28 M. If the director commences proceedings for the renewal of a  
29 general permit issued pursuant to this article, the existing general  
30 permit shall not expire and coverage may continue to be obtained by new  
31 dischargers until the proceedings have resulted in a final determination  
32 by the director. If the proceedings result in a decision not to renew the  
33 general permit, the existing general permit shall continue in effect until  
34 the last day for filing for review of the decision of the director not to  
35 renew the permit or until any later date that is fixed by court order.

36 N. This program is exempt from section 41-3102.

37 Sec. 20. Section 49-255.02, Arizona Revised Statutes, is amended to  
38 read:

39 49-255.02. Pretreatment program; rules and standards

40 A. The director shall adopt rules to establish a pretreatment  
41 program that is consistent with the requirements of sections 307, 308 and  
42 402 of the clean water act. The director shall not adopt any requirement  
43 that is more stringent than or conflicts with any requirements of the  
44 clean water act, EXCEPT THE DIRECTOR SHALL APPLY THE PRETREATMENT PROGRAM

1 TO PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGE TO A NON-WOTUS PROTECTED  
2 SURFACE WATER.

3 B. The rules adopted by the director shall provide for all of the  
4 following:

5 1. Development or modification of local pretreatment programs by  
6 the owners of publicly owned treatment works that discharge or as  
7 otherwise required under the clean water act or this article to prevent  
8 the use or disposal of sewage sludge produced by a publicly owned  
9 treatment works in violation of section 405 of the clean water act or  
10 requirements established pursuant to section 49-255.03, subsection A.

11 2. Approval by the director of new or modified local pretreatment  
12 programs or site specific modifications to pretreatment standards.

13 3. Oversight by the director of local program implementation.

14 C. The rules adopted by the director shall provide for the  
15 department to ensure that any industrial user of any publicly owned  
16 treatment works will comply with the requirements of sections 307 and 308  
17 of the clean water act.

18 Sec. 21. Section 49-255.03, Arizona Revised Statutes, is amended to  
19 read:

20 49-255.03. Sewage sludge program; rules and requirements

21 A. The director shall adopt rules to establish a sewage sludge  
22 program that is consistent with the requirements of sections 402 and 405  
23 of the clean water act. EXCEPT AS OTHERWISE REQUIRED BY THIS ARTICLE, the  
24 director shall not adopt any requirement that is more stringent than ~~or~~  
25 ~~conflicts with~~ any requirements of the clean water act. THE DIRECTOR  
26 SHALL NOT ADOPT ANY REQUIREMENT THAT CONFLICTS WITH ANY REQUIREMENT OF THE  
27 CLEAN WATER ACT.

28 B. The rules adopted by the director shall provide for the  
29 regulation of all sewage sludge use or disposal practices used in this  
30 state.

31 Sec. 22. Title 49, chapter 2, article 3.1, Arizona Revised  
32 Statutes, is amended by adding sections 49-255.04 and 49-255.05, to read:

33 49-255.04. Special provisions for discharges to non-WOTUS  
34 protected surface waters

35 A. PERMITS AND CONDITIONS OF PERMITS FOR DISCHARGES TO NON-WOTUS  
36 PROTECTED SURFACE WATERS SHALL NOT IMPLEMENT ANY SECTIONS OF THE CLEAN  
37 WATER ACT, INCLUDING SECTIONS 301, 302, 306, 307, 308, 312, 318 AND 405,  
38 AND SHALL NOT BE SUBJECT TO REVIEW, APPROVAL OR ENFORCEMENT BY THE UNITED  
39 STATES ENVIRONMENTAL PROTECTION AGENCY.

40 B. THE DIRECTOR SHALL APPLY THE RULES ESTABLISHED PURSUANT TO  
41 SECTIONS 49-255.01, 49-255.02 AND 49-255.03 TO NON-WOTUS PROTECTED SURFACE  
42 WATERS UNTIL THE DIRECTOR ADOPTS RULES FOR DISCHARGES TO NON-WOTUS  
43 PROTECTED SURFACE WATERS, EXCEPT THE DIRECTOR IS NOT REQUIRED TO FOLLOW  
44 ANY PROVISIONS RELATED TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
45 REVIEW, APPROVAL OR INVOLVEMENT IN PERMIT REVIEW OR APPROVAL. THE

1 DIRECTOR SHALL NOT ADOPT OR APPLY RULES REGARDING THE FOLLOWING DISCHARGES  
2 TO NON-WOTUS PROTECTED SURFACE WATERS:

3 1. EXCEPT AS APPLIED TO DISCHARGES FROM PUBLICLY OWNED TREATMENT  
4 WORKS, REQUIREMENTS SPECIFIC TO NEW SOURCES OR NEW DISCHARGERS UNDER THE  
5 CLEAN WATER ACT.

6 2. EXCEPT AS APPLIED TO DISCHARGES FROM PUBLICLY OWNED TREATMENT  
7 WORKS, TECHNOLOGY-BASED EFFLUENT LIMITATIONS, STANDARDS OR CONTROLS,  
8 INCLUDING NEW SOURCE PERFORMANCE STANDARDS, UNDER SECTIONS 301(b), 304(b),  
9 AND 306 OF THE CLEAN WATER ACT.

10 3. REQUIREMENTS TO EXPRESS ALL PERMIT LIMITATIONS, STANDARDS OR  
11 PROHIBITIONS FOR A METAL SOLELY IN TERMS OF TOTAL RECOVERABLE METAL.

12 4. REQUIREMENTS FOR REVIEW AND APPROVAL OF PERMITS BY THE UNITED  
13 STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE ISSUANCE.

14 C. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE  
15 UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS PRESCRIBED IN  
16 SUBSECTION B OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1  
17 FOR POINT SOURCE DISCHARGES OF STORM WATER FROM INDUSTRIAL OR CONSTRUCTION  
18 ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS. THE DIRECTOR SHALL USE A  
19 BEST MANAGEMENT PRACTICES APPROACH WHEN ISSUING AND IMPLEMENTING GENERAL  
20 PERMITS FOR STORM WATER DISCHARGES FROM INDUSTRIAL OR CONSTRUCTION  
21 ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS AND MAY INCLUDE ANALYTICAL  
22 MONITORING AND DISCHARGE LIMITS IF BEST MANAGEMENT PRACTICES CANNOT  
23 ACHIEVE APPLICABLE SURFACE WATER QUALITY STANDARDS. THE DIRECTOR MAY  
24 ISSUE AN INDIVIDUAL PERMIT FOR THOSE DISCHARGES ONLY IF THE DIRECTOR  
25 DETERMINES, USING REASONABLY CURRENT CREDIBLE AND SCIENTIFICALLY  
26 DEFENSIBLE DATA, THAT A PARTICULAR DISCHARGE IS A SIGNIFICANT CONTRIBUTOR  
27 OF POLLUTANTS TO A NON-WOTUS PROTECTED SURFACE WATER THAT CAUSES THE WATER  
28 TO EXCEED ONE OR MORE APPLICABLE WATER QUALITY STANDARDS. WHEN MAKING  
29 THIS DETERMINATION, THE DIRECTOR SHALL CONSIDER THE LOCATION OF THE  
30 DISCHARGE WITH RESPECT TO THE NON-WOTUS PROTECTED SURFACE WATER, THE SIZE  
31 OF THE DISCHARGE AND THE QUANTITY AND NATURE OF THE POLLUTANTS  
32 DISCHARGED. IF THE DIRECTOR DETERMINES THAT AN INDIVIDUAL PERMIT IS  
33 REQUIRED FOR A DISCHARGE OF STORM WATER FROM INDUSTRIAL OR CONSTRUCTION  
34 ACTIVITY TO A NON-WOTUS PROTECTED SURFACE WATER, THE DISCHARGER MUST BE  
35 NOTIFIED IN WRITING AND INFORMED OF THE REASONS FOR THE DETERMINATION AND  
36 THE RIGHT TO APPEAL THE INDIVIDUAL PERMIT DETERMINATION.

37 D. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE  
38 UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS IN SUBSECTION B  
39 OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1 FOR OTHER  
40 CATEGORIES OF POTENTIAL POINT SOURCE DISCHARGES, INCLUDING DE MINIMIS  
41 DISCHARGES, TO NON-WOTUS PROTECTED SURFACE WATERS THAT INVOLVE THE SAME OR  
42 SUBSTANTIALLY SIMILAR TYPES OF OPERATIONS, CONTAIN THE SAME OR  
43 SUBSTANTIALLY SIMILAR TYPES OF POLLUTANTS AND ARE MORE APPROPRIATELY  
44 CONTROLLED UNDER A GENERAL PERMIT THAN UNDER AN INDIVIDUAL PERMIT.

1 E. THE DIRECTOR MAY ADOPT RULES FOR POINT SOURCE DISCHARGES TO  
2 NON-WOTUS PROTECTED SURFACE WATERS. THE RULES ADOPTED BY THE DIRECTOR  
3 UNDER THIS SUBSECTION SHALL NOT INCLUDE ANY REQUIREMENT THAT IS MORE  
4 STRINGENT THAN REQUIREMENTS OF THE CLEAN WATER ACT, SHALL PROVIDE FOR  
5 ISSUING, AUTHORIZING, DENYING, MODIFYING, SUSPENDING OR REVOKING  
6 INDIVIDUAL OR GENERAL PERMITS AND SHALL ESTABLISH PERMIT CONDITIONS TO  
7 CARRY OUT THE PERMIT PROGRAM ESTABLISHED BY THIS SECTION.

8 F. THE DIRECTOR SHALL NOT CONSTRUE ANY RULE TO REQUIRE OVERSIGHT BY  
9 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF PERMITS OR PORTIONS  
10 OF PERMITS FOR DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, AND A  
11 RULE SHALL NOT APPLY IF IT WOULD REQUIRE REVIEW, APPROVAL OR ENFORCEMENT  
12 BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF DISCHARGES TO  
13 NON-WOTUS PROTECTED SURFACE WATERS.

14 G. IN PERMITS FOR DISCHARGES TO WOTUS AND NON-WOTUS PROTECTED  
15 SURFACE WATERS, THE DIRECTOR SHALL NOT IMPOSE DUPLICATIVE PERMIT  
16 REQUIREMENTS.

17 H. THE DIRECTOR SHALL NOT DELEGATE TO ANY CITY, TOWN OR COUNTY THE  
18 AUTHORITY TO REQUIRE PERMITS FOR POINT SOURCE DISCHARGES FROM CONSTRUCTION  
19 ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS.

20 49-255.05. Best management practices for activities within  
21 non-WOTUS

22 A. THE DIRECTOR SHALL ADOPT BY RULE BEST MANAGEMENT PRACTICES AND  
23 NOTIFICATION REQUIREMENTS TO ENSURE THAT THE ACTIVITIES PRESCRIBED IN THIS  
24 SECTION DO NOT VIOLATE APPLICABLE SURFACE WATER QUALITY STANDARDS. THE  
25 DIRECTOR MAY INCLUDE ONLY THOSE BEST MANAGEMENT PRACTICES THAT EXTEND TO:

26 1. ACTIVITIES CONDUCTED WITHIN THE ORDINARY HIGH WATERMARK OF  
27 PERENNIAL OR INTERMITTENT NON-WOTUS PROTECTED SURFACE WATERS.

28 2. ACTIVITIES CONDUCTED WITHIN THE BED AND BANKS OF WATERS THAT  
29 MATERIALLY IMPACT DOWNSTREAM NON-WOTUS PROTECTED SURFACE WATERS. THE  
30 DIRECTOR SHALL DETERMINE THROUGH RULEMAKING WHAT CONSTITUTES A MATERIAL  
31 IMPACT AND THAT RULEMAKING SHALL BE BASED ON FACTORS THAT INCLUDE DISTANCE  
32 AND TOPOGRAPHY.

33 3. ACTIVITIES THAT ARE NOT ALREADY REGULATED UNDER THIS TITLE.

34 B. THE DIRECTOR MAY NOT ADOPT BEST MANAGEMENT PRACTICES AND  
35 NOTIFICATION REQUIREMENTS FOR THE FOLLOWING:

36 1. DISCHARGES TO A NON-WOTUS PROTECTED SURFACE WATER INCIDENTAL TO  
37 A RECHARGE PROJECT.

38 2. ESTABLISHED OR ONGOING FARMING, RANCHING AND SILVICULTURE  
39 ACTIVITIES SUCH AS PLOWING, SEEDING, CULTIVATING, MINOR DRAINAGE OR  
40 HARVESTING FOR THE PRODUCTION OF FOOD, FIBER OR FOREST PRODUCTS OR UPLAND  
41 SOIL AND WATER CONSERVATION PRACTICES.

42 3. MAINTENANCE BUT NOT CONSTRUCTION OF DRAINAGE DITCHES.

43 4. CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES.

44 5. MAINTENANCE OF STRUCTURES SUCH AS DAMS, DIKES AND LEVEES.

1           Sec. 23. Section 49-256, Arizona Revised Statutes, is amended to  
2 read:

3           49-256. Adoption and enactment of federal definitions

4           For the purposes of this article and for establishing primacy for  
5 this state's dredge and fill permit program under 33 United States Code  
6 section 1344, the following definitions are adopted and enacted as  
7 follows:

8           1. "Compensatory mitigation" means the restoration  
9 (re-establishment or rehabilitation), establishment (creation),  
10 enhancement, and/or in certain circumstances preservation of aquatic  
11 resources for the purposes of offsetting unavoidable adverse impacts ~~which~~  
12 ~~THAT~~ remain after all appropriate and practicable avoidance and  
13 minimization has been achieved.

14           2. "Dredged material" means material that is excavated or dredged  
15 from ~~navigable waters~~ WOTUS.

16           3. "Fill material" means:

17           (a) Except as specified in subdivision (c) of this definition, the  
18 term fill material means material placed in ~~navigable waters~~ WOTUS where  
19 the material has the effect of EITHER:

20           (i) Replacing any portion of a ~~navigable water~~ WOTUS with dry land.

21           ~~;~~ ~~or~~

22           (ii) Changing the bottom elevation of any portion of a ~~navigable~~  
23 ~~water~~ WOTUS.

24           (b) Examples of such fill material include, but are not limited to:  
25 rock, sand, soil, clay, plastics, construction debris, wood chips,  
26 overburden from mining or other excavation activities, and materials used  
27 to create any structure or infrastructure in the ~~navigable waters~~ WOTUS.

28           (c) The term fill material does not include trash or garbage.

29           4. "General permit" means a permit authorizing a category of  
30 discharges of dredged or fill material under this article. General  
31 permits are permits for categories of discharge which are similar in  
32 nature, will cause only minimal adverse environmental effects when  
33 performed separately, and will have only minimal cumulative adverse effect  
34 on the environment.

35           5. "In-lieu fee program" means a program involving the restoration,  
36 establishment, enhancement, and/or preservation of aquatic resources  
37 through funds paid to a governmental or non-profit natural resources  
38 management entity to satisfy compensatory mitigation requirements for  
39 dredge and fill permits issued pursuant to this article. Similar to but  
40 distinct from a mitigation bank, an in-lieu fee program sells compensatory  
41 mitigation credits to permittees whose obligation to provide compensatory  
42 mitigation is then transferred to the in-lieu program sponsor. The  
43 operation and use of an in-lieu fee program are governed by an in-lieu fee  
44 program instrument.

1           6. "Mitigation bank" means a site, or suite of sites, where  
2 resources (e.g., wetlands, streams, riparian areas) are restored,  
3 established, enhanced, and/or preserved for the purpose of providing  
4 compensatory mitigation for impacts authorized by dredge and fill permits  
5 issued pursuant to this article. In general, a mitigation bank sells  
6 compensatory mitigation credits to permittees whose obligation to provide  
7 compensatory mitigation is then transferred to the mitigation bank  
8 sponsor. The operation and use of a mitigation bank are governed by a  
9 mitigation banking instrument.

10           7. "Party affected by a jurisdictional determination" means a  
11 permit applicant, landowner, a lease, easement or option holder, or other  
12 individual who has an identifiable and substantial legal interest in the  
13 property (or a person acting with the approval of any of the foregoing)  
14 who has received an approved jurisdictional determination.

15           8. "Permittee-responsible mitigation" means an aquatic resource  
16 restoration, establishment, enhancement, and/or preservation activity  
17 undertaken by the permittee (or an authorized agent or contractor) to  
18 provide compensatory mitigation for which the permittee retains full  
19 responsibility.

20           9. "Practicable" means available and capable of being done after  
21 taking into consideration cost, existing technology, and logistics in  
22 light of overall project purposes.

23           10. "Wetlands" means those areas that are inundated or saturated by  
24 surface or groundwater at a frequency and duration sufficient to support,  
25 and that under normal circumstances do support, a prevalence of vegetation  
26 typically adapted for life in saturated soil conditions. Wetlands  
27 generally include swamps, marshes, bogs, and similar areas.

28           Sec. 24. Section 49-256.01, Arizona Revised Statutes, is amended to  
29 read:

30           49-256.01. Dredge and fill permit program; permits; rules;  
31           prohibitions; exemptions; exceptions; notice

32           A. ~~For purposes of implementing~~ TO IMPLEMENT the permit program  
33 established by 33 United States Code section 1344, the director may  
34 establish by rule a dredge and fill permit program that is consistent with  
35 and ~~no~~ NOT more stringent than the clean water act dredge and fill  
36 program, including a permitting process.

37           B. During any period in which the state has been granted authority  
38 to administer the permit program established by 33 United States Code  
39 section 1344, a person may not discharge dredged or fill material unless  
40 the discharge is exempt under 33 United States Code section 1344(f) or  
41 rules adopted pursuant to this article, except under either of the  
42 following conditions:

43           1. In conformance with a permit that is issued or authorized under  
44 this article.

1           2. Pursuant to a permit that is issued or authorized by the United  
2 States army corps of engineers until a permit that is issued or authorized  
3 under this article takes effect.

4           C. Rules adopted by the director for the purposes of a permit  
5 program for dredge and fill shall:

6           1. Provide for issuing, authorizing, denying, modifying, suspending  
7 or revoking individual permits, general permits and emergency permits for  
8 the discharge of dredged or fill material into ~~navigable waters~~ WOTUS  
9 regulated by this state under the clean water act for purposes of  
10 implementing the permit program established by 33 United States Code  
11 section 1344.

12           2. Establish permit conditions that ensure compliance with the  
13 applicable requirements of section 404 of the clean water act, including  
14 the guidelines issued under 33 United States Code section 1344(b)(1).

15           3. Establish maintenance, monitoring, sampling, reporting,  
16 recordkeeping and any other permitting requirements as necessary to  
17 maintain primary enforcement responsibility or to determine compliance  
18 with this article.

19           4. Establish the following in accordance with 33 United States Code  
20 section 1344:

21           (a) Circumstances and activities that do not require a dredge or  
22 fill permit.

23           (b) Activities that are exempt from the requirements of this  
24 article for any discharge or fill material that may result from those  
25 activities, and the conditions under which those activities are exempt.

26           (c) Circumstances under which a discharge of dredged or fill  
27 material shall not be permitted.

28           5. Establish procedures for the director to make jurisdictional  
29 determinations that determine whether a wetland or waterbody is a  
30 ~~navigable water~~ WOTUS subject to regulatory jurisdiction under this  
31 article. Jurisdictional determinations:

32           (a) Shall be in writing and be identified as either preliminary or  
33 approved.

34           (b) Do not include determinations that a particular activity  
35 requires a permit under this article.

36           6. Establish public notice and comment procedures as necessary to  
37 maintain primacy for the dredge and fill PERMIT program and as the  
38 director deems appropriate to inform the public.

39           7. Provide for any other provisions necessary to maintain state  
40 primary enforcement responsibility under 33 United States Code section  
41 1344 and to implement the provisions of this article.

42           D. Approved jurisdictional determinations are appealable agency  
43 actions as defined by section 41-1092 and may be appealed by a party  
44 affected by a jurisdictional determination. Preliminary jurisdictional  
45 determinations are not appealable agency actions and notwithstanding

1 section 41-1092.03, the right to appeal an approved jurisdictional  
2 determination does not extend to adjacent landowners or to third parties  
3 that are not parties affected by a jurisdictional determination.

4 E. On assuming authority to administer the permit program  
5 established by 33 United States Code section 1344, the department shall:

6 1. On request by a party affected by a jurisdictional  
7 determination, recognize and adopt any existing approved jurisdictional  
8 determinations that were originally issued by the United States army corps  
9 of engineers if the federal definition of ~~navigable waters~~ WOTUS that is  
10 applicable in this state has not changed since the issuance of the  
11 approved jurisdictional determinations.

12 2. On request by a party affected by a jurisdictional  
13 determination, renew approved jurisdictional determinations that were  
14 originally issued by the United States army corps of engineers on the same  
15 terms as the original unless:

16 (a) Physical changes have occurred affecting the determination that  
17 are likely to alter the jurisdictional status.

18 (b) The federal definition of ~~navigable waters~~ WOTUS that is  
19 applicable in this state has changed since the issuance of the approved  
20 jurisdictional determinations.

21 (c) Additional field data show that the original determination was  
22 based on inaccurate data and the new data warrant a revision to the  
23 original determination.

24 F. The program established pursuant to this article is exempt from  
25 section 41-3102.

26 Sec. 25. Section 49-256.02, Arizona Revised Statutes, is amended to  
27 read:

28 49-256.02. Compensatory mitigation

29 A. As a part of the program established pursuant to section  
30 49-256.01, and consistent with the guidelines established pursuant to  
31 33 United States Code section 1344(b)(1), the director shall establish by  
32 rule standards and criteria for the use of all types of compensatory  
33 mitigation, including on-site and off-site permittee-responsible  
34 mitigation, mitigation banks and in-lieu fee mitigation to offset  
35 unavoidable impacts to ~~navigable waters~~ WOTUS authorized by permits issued  
36 under this article.

37 B. Mitigation banks and in-lieu fee programs may be used to  
38 compensate for unavoidable impacts to ~~navigable waters~~ WOTUS that are  
39 authorized by general permits and individual permits, including  
40 after-the-fact permits, in accordance with rules established pursuant to  
41 this section. In addition to other potential injunctive relief or other  
42 relief requested under section 49-262, mitigation banks and in-lieu fee  
43 programs may be used to satisfy requirements arising from an enforcement  
44 action under this article.

1 C. Rules established by the director pursuant to this section shall  
2 identify alternative compensatory mitigation options for a permit  
3 applicant if an approved mitigation bank or in-lieu fee program that is  
4 located in the same watershed as the permit applicant's proposed discharge  
5 rejects that permit applicant's participation in that mitigation bank or  
6 in-lieu fee program.

7 Sec. 26. Section 49-261, Arizona Revised Statutes, is amended to  
8 read:

9 49-261. Compliance orders; appeal; enforcement

10 A. If the director determines that a person is in violation of a  
11 rule adopted or a condition of a permit issued pursuant to section 49-203,  
12 subsection A, paragraph ~~6~~ 7, any provision of article 2, 3, 3.1, ~~or~~ 3.2  
13 or 3.3 of this chapter, a rule adopted pursuant to article 2, 3, 3.1, ~~or~~  
14 3.2 or 3.3 of this chapter, a discharge limitation or any other condition  
15 of a permit issued under article 2, 3, 3.1, ~~or~~ 3.2 or 3.3 of this chapter  
16 or is creating an imminent and substantial endangerment to the public  
17 health or environment, the director may issue an order requiring  
18 compliance within a reasonable time period.

19 B. A compliance order shall state with reasonable specificity the  
20 nature of the violation, a time for compliance if applicable and the right  
21 to a hearing.

22 C. A compliance order shall be transmitted to the alleged violator  
23 by certified mail, return receipt requested, or by personal service.

24 D. A compliance order becomes final and enforceable in the superior  
25 court unless within thirty days after the receipt of the order the alleged  
26 violator requests a hearing before an administrative law judge. If a  
27 hearing is requested, the order does not become final until the  
28 administrative law judge has issued a final decision on the appeal.  
29 Appeals shall be conducted pursuant to section 49-321.

30 E. At the request of the director the attorney general may commence  
31 an action in superior court to enforce orders issued under this section  
32 once an order becomes final.

33 Sec. 27. Section 49-262, Arizona Revised Statutes, is amended to  
34 read:

35 49-262. Injunctive relief; civil penalties; recovery of  
36 litigation costs; affirmative defense

37 A. Whether or not a person has requested a hearing, the director,  
38 through the attorney general, may request a temporary restraining order, a  
39 preliminary injunction, a permanent injunction or any other relief  
40 necessary to protect the public health if the director has reason to  
41 believe either of the following:

42 1. That a person is in violation of:

43 (a) Any provision of article 2, 3, 3.1, 3.2 or 3.3 of this chapter.

44 (b) A rule adopted pursuant to section 49-203, subsection A,  
45 paragraph ~~6~~ 7.

1 (c) A rule adopted pursuant to article 2, 3, 3.1, 3.2 or 3.3 of  
2 this chapter.

3 (d) A discharge limitation or any other condition of a permit  
4 issued under article 2, 3, 3.1, 3.2 or 3.3 of this chapter.

5 2. That a person is creating an actual or potential endangerment to  
6 the public health or environment because of acts performed ~~in violation of~~  
7 **THAT VIOLATE** this chapter.

8 B. Notwithstanding any other provision of this chapter, if the  
9 director, the county attorney or the attorney general has reason to  
10 believe that a person is creating an imminent and substantial endangerment  
11 to the public health or environment because of acts performed ~~in violation~~  
12 ~~of~~ **THAT VIOLATE** article 2, 3, 3.1, 3.2 or 3.3 of this chapter or a rule  
13 adopted or a condition of a permit issued pursuant to section 49-203,  
14 subsection A, paragraph 2, ~~6- 7~~ or ~~7- 8~~, the county attorney or attorney  
15 general may request a temporary restraining order, a preliminary  
16 injunction, a permanent injunction or any other relief necessary to  
17 protect the public health.

18 C. A person who violates any provision of article 2, 3, 3.1 or 3.2  
19 of this chapter or a rule, permit, discharge limitation or order issued or  
20 adopted pursuant to article 2, 3, 3.1 or 3.2 of this chapter is subject to  
21 a civil penalty of not more than \$25,000 per day per violation. A person  
22 who violates any rule adopted or a condition of a permit issued pursuant  
23 to section 49-203, subsection A, paragraph ~~6- 7~~ is subject to a civil  
24 penalty of not more than \$5,000 per day per violation. A person who  
25 violates any rule adopted, permit condition or other provision of article  
26 3.3 of this chapter is subject to a civil penalty of not more than \$5,000  
27 per day per violation. The attorney general may, and at the request of  
28 the director shall, commence an action in superior court to recover civil  
29 penalties provided by this section.

30 D. The court, in issuing any final order in any civil action  
31 brought under this section, may award costs of litigation, including  
32 reasonable attorney and expert witness fees, to any substantially  
33 prevailing party if the court determines such an award is appropriate. If  
34 a temporary restraining order is sought, the court may require the filing  
35 of a bond or equivalent security.

36 E. All civil penalties except litigation costs obtained under this  
37 section shall be deposited, pursuant to sections 35-146 and 35-147, in the  
38 state general fund.

39 F. Except as applied to permits issued or authorized pursuant to  
40 article 3.1, 3.2 or 3.3 of this chapter, it is an affirmative defense to  
41 civil liability under this section and section 49-261 for causing or  
42 contributing to a violation of a water quality standard established  
43 pursuant to this chapter, or a violation of a permit condition prohibiting  
44 a violation of an aquifer water quality standard or limitation at the  
45 point of compliance or a surface water quality standard if the release

1 that caused or contributed to the violation came from a facility owned or  
2 operated by a party that has either:

3 1. Undertaken a remedial or response action approved by the  
4 director or the administrator under this title or CERCLA in response to  
5 the release of a hazardous substance, pollutant or contaminant that caused  
6 or contributed to the violation of article 2 of this chapter and is in  
7 compliance with that remedial or response action.

8 2. Otherwise resolved its liability for the release of a hazardous  
9 substance that caused or contributed to the violation of article 2 of this  
10 chapter in whole or in part by the execution of a settlement agreement or  
11 consent decree with the director or administrator under this article,  
12 CERCLA or any other environmental law and is in compliance with that  
13 settlement agreement or consent decree.

14 G. Subsection F of this section does not prevent the director from  
15 taking an appropriate enforcement action to address the release of a  
16 hazardous substance, pollutant or contaminant or the violation of a permit  
17 condition before or as an element of an approved remedial or response  
18 action, settlement agreement or consent decree.

19 H. In determining the amount of a civil penalty for a violation  
20 under article 3, 3.1, 3.2 or 3.3 of this chapter, the court shall consider  
21 the following factors:

22 1. The seriousness of the violation or violations.

23 2. The economic benefit, if any, that results from the violation.

24 3. Any history of similar violations.

25 4. Any good faith efforts to comply with the applicable  
26 requirements.

27 5. The economic impact of the penalty on the violator.

28 6. The extent to which the violation was caused by a third party.

29 7. Other matters as justice may require.

30 I. A single operational upset that leads to simultaneous violations  
31 of more than one pollutant limitation in a permit issued or authorized  
32 pursuant to section 49-255.01 constitutes a single violation for purposes  
33 of any penalty calculation.

34 J. If a permittee holds both a permit issued or authorized pursuant  
35 to article 3 of this chapter and a permit issued or authorized pursuant to  
36 article 3.1, 3.2 or 3.3 of this chapter and the permittee violates a  
37 similar provision in both permits simultaneously, the department shall not  
38 recover penalties for violations of both permits based on the same act or  
39 omission.

40 K. For a wastewater treatment facility or system that is regulated  
41 as a public service corporation by the corporation commission, the  
42 department may make a written request to the corporation commission to  
43 take necessary corrective actions within thirty calendar days after both  
44 of the following occur:

45 1. The department does any one or more of the following:

1 (a) Determines that the wastewater treatment facility or system is  
2 out of compliance with an administrative order issued by the department  
3 for a violation of this chapter.

4 (b) Files a civil action against the owner or operator of the  
5 wastewater treatment facility or system for a violation of this chapter.

6 (c) Determines that an emergency exists with respect to the  
7 wastewater treatment facility or system.

8 2. The department determines that the corporation commission taking  
9 necessary corrective actions would expedite the wastewater treatment  
10 facility's or system's return to compliance with this chapter.

11 Sec. 28. Section 49-371, Arizona Revised Statutes, is amended to  
12 read:

13 49-371. Local stormwater quality programs; authority;  
14 limitations; fee; civil penalty; definition

15 A. A county that is required by the clean water act to obtain  
16 coverage under a national or state pollutant discharge elimination system  
17 stormwater program OR A COUNTY THAT IS REQUIRED TO OBTAIN COVERAGE UNDER  
18 AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PURSUANT TO  
19 ARTICLE 3.1 OF THIS CHAPTER may do all of the following:

20 1. Develop and implement stormwater pollution prevention plans and  
21 stormwater management programs as prescribed by the clean water act OR  
22 ARTICLE 3.1 OF THIS CHAPTER.

23 2. Adopt, amend, repeal and implement any ordinances, rules or  
24 regulations necessary to comply with the minimum requirements of the clean  
25 water act OR ARTICLE 3.1 OF THIS CHAPTER, including the imposition and  
26 collection of fees for issuing and administering permits, reviewing plans  
27 and conducting inspections. Any fees imposed pursuant to this section  
28 shall not exceed the reasonable costs of the county to issue and  
29 administer permits, review plans and conduct inspections. Fees collected  
30 pursuant to this section may not be used to fund stormwater infrastructure  
31 costs.

32 3. Adopt rules, regulations or ordinances regulating the use of  
33 lands or rights-of-way owned or leased by the county as may be necessary  
34 to implement and enforce its national or state pollutant discharge  
35 elimination system stormwater management program. Rules, regulations or  
36 ordinances adopted pursuant to this paragraph may include provisions for  
37 both of the following:

38 (a) ~~Establishment~~ ESTABLISHING and ~~enforcement~~ ENFORCING of a  
39 county permit program, including conditions for the review, issuance,  
40 revision, renewal, revocation, administration and enforcement of a permit.

41 (b) ~~Establishment~~ ESTABLISHING of fees for the use of lands or  
42 rights-of-way and the discharge of stormwater or other waters onto or  
43 across those lands or rights-of-way pursuant to a permit.

44 4. Enforce the ordinances, rules or regulations adopted pursuant to  
45 this section consistent with section 49-372.

1           5. Seek a civil penalty of not more than ~~two thousand five hundred~~  
2 ~~dollars~~ \$2,500 for each violation. Each day of a violation constitutes a  
3 separate offense.

4           B. An ordinance, rule or regulation adopted pursuant to this  
5 section, or a stormwater management program developed and implemented by a  
6 county pursuant to this section, shall not be more stringent than or  
7 conflict with any requirement of the clean water act OR ARTICLE 3.1 OF  
8 THIS CHAPTER. A CITY, TOWN OR COUNTY MAY NOT REGULATE UNDER THIS SECTION  
9 ANY ACTIVITY THAT DOES NOT DISCHARGE TO A PROTECTED SURFACE WATER.

10          C. A county that operates a regulated small municipal separate  
11 storm sewer system THAT DISCHARGES TO A PROTECTED SURFACE WATER shall  
12 conduct its pollutant discharge elimination system stormwater management  
13 program and shall limit the application of any ordinance, rule or  
14 regulation as follows:

15           1. In urbanized areas as described in 40 Code of Federal  
16 Regulations section 122.32 as necessary to meet the requirements of 40  
17 Code of Federal Regulations section 122.34(b)(3). FOR SMALL MUNICIPAL  
18 SEPARATE STORM SEWER SYSTEMS THAT DISCHARGE TO NON-WOTUS PROTECTED SURFACE  
19 WATERS, THE COUNTY SHALL APPLY THIS PARAGRAPH AS IF THE SMALL MUNICIPAL  
20 SEPARATE STORM SEWER SYSTEM DISCHARGED TO A WOTUS PROTECTED SURFACE WATER.

21           2. As necessary to meet the requirements of public education and  
22 outreach, public involvement and participation as provided by the clean  
23 water act OR ARTICLE 3.1 OF THIS CHAPTER.

24          D. ~~For the purposes of this section and~~ Except as required by the  
25 clean water act, a county may not require a permit from any person with a  
26 federal or state pollutant discharge elimination system permit regulating  
27 the same activity at the same location.

28          E. ~~For the purposes of this section and~~ Except as required by 40  
29 Code of Federal Regulations section 122.34, a county may not regulate any  
30 person or activity exempt under 33 United States Code section 1342(l), 40  
31 Code of Federal Regulations section 122.3 or Arizona administrative code  
32 ~~18-9-A902(G)~~ R18-9-A902(G).

33          F. ~~For the purposes of~~ IF adopting an ordinance, rule or regulation  
34 pursuant to this section, a county shall use the definitions prescribed in  
35 section 49-255.

36          G. Fees received by a county pursuant to an ordinance or rule  
37 adopted pursuant to this article shall be deposited with the county for  
38 use in administering the programs or plans developed and implemented  
39 pursuant to this section.

40          H. Before adopting any ordinance, rule or regulation pursuant to  
41 this section, a county shall file with the secretary of state a written  
42 statement including a summary of the proposed rule, ordinance or other  
43 regulation. The summary shall provide the name of the person with the  
44 county to contact with questions or comments. The secretary of state  
45 shall publish the written statement in the next issue of the Arizona

1 administrative register at no cost to the county. The county shall make  
2 the text of the rule, ordinance or other regulation available to the  
3 public at the same time it files the written summary of the rule,  
4 ordinance or other regulation with the secretary of state as provided in  
5 this subsection. The county shall also comply with the requirements of  
6 section 49-112, subsection D, paragraphs 2, 3 and 4.

7 I. For the purposes of this article, "county" means a county that  
8 operates a regulated small municipal separate ~~stormwater~~ STORM SEWER  
9 system pursuant to 40 Code of Federal Regulations section 122.32. FOR  
10 SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS THAT DISCHARGE TO NON-WOTUS  
11 PROTECTED SURFACE WATERS, THIS DEFINITION SHALL APPLY AS IF THE SMALL  
12 MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGED TO A WOTUS PROTECTED  
13 SURFACE WATER.

14 Sec. 29. Section 49-391, Arizona Revised Statutes, is amended to  
15 read:

16 49-391. Local enforcement of water pretreatment requirements;  
17 civil penalties

18 A. A city, town, county or sanitary district of this state may  
19 adopt, amend or repeal any ordinances necessary for implementing and  
20 enforcing the pretreatment requirements under the federal water pollution  
21 control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United  
22 States Code sections 1251 through 1376), as amended, AND ARTICLE 3.1 OF  
23 THIS CHAPTER and enforce the ordinances by imposing and recovering a civil  
24 penalty of not more than ~~twenty-five thousand dollars~~ \$25,000 for each  
25 violation as prescribed by this section. For continuing violations, each  
26 day may constitute a separate offense.

27 B. A city, town, county or sanitary district shall not receive  
28 civil penalties under this section if an interested person, the United  
29 States, this state, or another city, town, county or sanitary district has  
30 received civil penalties or is diligently prosecuting a civil penalty  
31 action in a court of the United States or this state, or in an  
32 administrative enforcement proceeding, with respect to the same  
33 allegations, standard, requirement, or order. This state, and any city,  
34 town, county or sanitary district of this state that is or may be affected  
35 by a civil, judicial or administrative action, may intervene as a matter  
36 of right in any pending civil, judicial or administrative action for  
37 purposes of obtaining injunctive or declaratory relief.

38 C. The city, town, county or sanitary district may seek compliance  
39 with pretreatment ordinances and recovery of the civil penalties provided  
40 by this section either by an action in superior court or by a negotiated  
41 settlement agreement. Before a consent decree filed with superior court  
42 or a negotiated settlement becomes final, the city, town, county or  
43 sanitary district seeking compliance shall provide a period of thirty days  
44 for public comment. In determining the amount of a civil penalty the  
45 court and the city, town, county or sanitary district shall consider:

- 1           1. The seriousness of the violation.
- 2           2. The economic benefit, if any, resulting from the violation.
- 3           3. Any history of such violation.
- 4           4. Any good faith efforts to comply with the applicable
- 5 requirements.
- 6           5. The economic impact of the penalty on the violator.
- 7           6. Such other factors as justice may require.
- 8           D. In addition to the remedies provided in this section,
- 9 enforcement of such ordinances may include injunctive or other equitable
- 10 relief.
- 11           E. All monies collected pursuant to an ordinance adopted under this
- 12 section shall be deposited with the respective city, town, county or
- 13 sanitary district.
- 14           Sec. 30. Section 49-701, Arizona Revised Statutes, is amended to
- 15 read:
- 16           49-701. Definitions
- 17           In this chapter, unless the context otherwise requires:
- 18           1. "Administratively complete plan" means an application for a
- 19 solid waste facility plan approval that the department has determined
- 20 contains each of the components required by statute or rule but that has
- 21 not undergone technical review or public notice by the department.
- 22           2. "Administrator" means the administrator of the United States
- 23 environmental protection agency.
- 24           3. "Closed solid waste facility" means any of the following:
- 25           (a) A solid waste facility that ceases storing, treating,
- 26 processing or receiving for disposal solid waste before the effective date
- 27 of design and operation rules for that type of facility adopted pursuant
- 28 to section 49-761.
- 29           (b) A public solid waste landfill that meets any of the following
- 30 criteria:
- 31           (i) Ceased receiving solid waste prior to July 1, 1983.
- 32           (ii) Ceased receiving solid waste and received at least two feet of
- 33 cover material prior to January 1, 1986.
- 34           (iii) Received approval for closure from the department.
- 35           (c) A public composting plant or a public incinerating facility
- 36 that closed in accordance with an approved plan.
- 37           4. "Conditionally exempt small quantity generator waste" means
- 38 hazardous waste in quantities as defined by rules adopted pursuant to
- 39 section 49-922.
- 40           5. "Construction debris" means solid waste derived from the
- 41 construction, repair or remodeling of buildings or other structures.
- 42           6. "County" means:
- 43           (a) The board of supervisors in the context of the exercise of
- 44 powers or duties.

- 1 (b) The unincorporated areas in the context of area of  
2 jurisdiction.
- 3 7. "Demolition debris" means solid waste derived from the  
4 demolition of buildings or other structures.
- 5 8. "Discharge" has the same meaning prescribed in section 49-201.
- 6 9. "Existing solid waste facility" means a solid waste facility  
7 that begins construction or is in operation on the effective date of the  
8 design and operation rules adopted by the director pursuant to section  
9 49-761 for that type of solid waste facility.
- 10 10. "Facility plan" means any design or operating plan for a solid  
11 waste facility or group of solid waste facilities.
- 12 11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part  
13 257 in effect on May 1, 2004.
- 14 12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part  
15 258 in effect on May 1, 2004.
- 16 13. "Household hazardous waste" means solid waste as described in 40  
17 Code of Federal Regulations section 261.4(b)(1) as incorporated by  
18 reference in the rules adopted pursuant to chapter 5 of this title.
- 19 14. "Household waste" means any solid waste including garbage,  
20 rubbish and sanitary waste from septic tanks that is generated from  
21 households including single and ~~multiple-family~~ MULTIPLE-FAMILY  
22 residences, hotels and motels, bunkhouses, ranger stations, crew quarters,  
23 campgrounds, picnic grounds and day use recreation areas, not including  
24 construction debris, landscaping rubble or demolition debris.
- 25 15. "Inert material":
- 26 (a) Means material that satisfies all of the following conditions:
- 27 (i) Is not flammable.
- 28 (ii) Will not decompose.
- 29 (iii) Will not leach substances in concentrations that exceed  
30 applicable aquifer water quality standards prescribed by section 49-201,  
31 paragraph ~~20~~ 22 when subjected to a water leach test that is designed to  
32 approximate natural infiltrating waters.
- 33 (b) Includes concrete, asphaltic pavement, brick, rock, gravel,  
34 sand, soil and metal, if used as reinforcement in concrete, but does not  
35 include special waste, hazardous waste, glass or other metal.
- 36 16. "Land disposal" means placement of solid waste in or on land.
- 37 17. "Landscaping rubble" means material that is derived from  
38 landscaping or reclamation activities and that may contain inert material  
39 and ~~no~~ NOT more than ten ~~per cent~~ PERCENT by volume of vegetative waste.
- 40 18. "Management agency" means any person responsible for the  
41 day-to-day operation, maintenance and management of a particular public  
42 facility or group of public facilities.
- 43 19. "Medical waste" means any solid waste ~~which~~ THAT is generated in  
44 the diagnosis, treatment or immunization of a human being or animal or in  
45 any research relating to that diagnosis, treatment or immunization, or in

1 the production or testing of biologicals, and includes discarded drugs but  
2 does not include hazardous waste as defined in section 49-921 other than  
3 conditionally exempt small quantity generator waste.

4 20. "Municipal solid waste landfill" means any solid waste landfill  
5 that accepts household waste, household hazardous waste or conditionally  
6 exempt small quantity generator waste.

7 21. "New solid waste facility" means a solid waste facility that  
8 begins construction or operation after the effective date of design and  
9 operating rules that are adopted pursuant to section 49-761 for that type  
10 of solid waste facility.

11 22. "On site" means the same or geographically contiguous property  
12 that may be divided by public or private right-of-way if the entrance and  
13 exit between the properties are at a crossroads intersection and access is  
14 by crossing the right-of-way and not by traveling along the right-of-way.  
15 Noncontiguous properties that are owned by the same person and connected  
16 by a right-of-way that is controlled by that person and to which the  
17 public does not have access are deemed on site property. Noncontiguous  
18 properties that are owned or operated by the same person regardless of  
19 right-of-way control are also deemed on site property.

20 23. "Person" means any public or private corporation, company,  
21 partnership, firm, association or society of persons, the federal  
22 government and any of its departments or agencies, this state or any of  
23 its agencies, departments, political subdivisions, counties, towns or  
24 municipal corporations, as well as a natural person.

25 24. "Process" or "processing" means the reduction, separation,  
26 recovery, conversion or recycling of solid waste.

27 25. "Public solid waste facility" means a transfer facility and any  
28 site owned, operated or utilized by any person for the storage,  
29 processing, treatment or disposal of solid waste that is not generated on  
30 site.

31 26. "Recycling facility" means a solid waste facility that is owned,  
32 operated or used for the storage, treatment or processing of recyclable  
33 solid waste and that handles wastes that have a significant adverse effect  
34 on the environment.

35 27. "Salvaging" means the removal of solid waste from a solid waste  
36 facility with the permission and in accordance with rules or ordinances of  
37 the management agency for purposes of productive reuse.

38 28. "Scavenging" means the unauthorized removal of solid waste from  
39 a solid waste facility.

40 29. "Solid waste facility" means a transfer facility and any site  
41 owned, operated or ~~utilized~~ USED by any person for the storage,  
42 processing, treatment or disposal of solid waste, conditionally exempt  
43 small quantity generator waste or household hazardous waste but does not  
44 include the following:

1 (a) A site at which less than one ton of solid waste that is not  
2 household waste, household hazardous waste, conditionally exempt small  
3 quantity generator waste, medical waste or special waste and that was  
4 generated on site is stored, processed, treated or disposed in compliance  
5 with section 49-762.07, subsection F.

6 (b) A site at which solid waste that was generated on site is  
7 stored for ninety days or less.

8 (c) A site at which nonputrescible solid waste that was generated  
9 on site in amounts of less than one thousand kilograms per month per type  
10 of nonputrescible solid waste is stored and contained for one hundred  
11 eighty days or less.

12 (d) A site that stores, treats or processes paper, glass, wood,  
13 cardboard, household textiles, scrap metal, plastic, vegetative waste,  
14 aluminum, steel or other recyclable material and that is not a waste tire  
15 facility, a transfer facility or a recycling facility.

16 (e) A site where sludge from a wastewater treatment facility is  
17 applied to the land as a fertilizer or beneficial soil amendment in  
18 accordance with sludge application requirements.

19 (f) A closed solid waste facility.

20 (g) A solid waste landfill that is performing or has completed  
21 postclosure care before July 1, 1996 in accordance with an approved  
22 postclosure plan.

23 (h) A closed solid waste landfill performing a onetime removal of  
24 solid waste from the closed solid waste landfill, if the operator provides  
25 a written notice that describes the removal project to the department  
26 within thirty days after completion of the removal project.

27 (i) A site where solid waste generated in street sweeping  
28 activities is stored, processed or treated prior to disposal at a solid  
29 waste facility authorized under this chapter.

30 (j) A site where solid waste generated at either a drinking water  
31 treatment facility or a wastewater treatment facility is stored,  
32 processed, or treated on site prior to disposal at a solid waste facility  
33 authorized under this chapter, and any discharge is regulated pursuant to  
34 chapter 2, article 3 of this title.

35 (k) A closed solid waste landfill where development activities  
36 occur on the property or where excavation or removal of solid waste is  
37 performed for maintenance and repair provided the following conditions are  
38 met:

39 (i) When the project is completed there will not be an increase in  
40 leachate that would result in a discharge.

41 (ii) When the project is completed the concentration of methane gas  
42 will not exceed twenty-five ~~per cent~~ PERCENT of the lower explosive limit  
43 in on-site structures, or the concentration of methane gas will not exceed  
44 the lower explosive limit at the property line.

- 1 (iii) Protection has been provided to prevent remaining waste from  
2 causing any vector, odor, litter or other environmental nuisance.
- 3 (iv) The operator provides a notice to the department containing  
4 the information required by section 49-762.07, subsection A, paragraphs 1,  
5 2 and 5 and a brief description of the project.
- 6 (l) Agricultural on-site disposal as provided in section 49-766.
- 7 (m) The use, storage, treatment or disposal of by-products of  
8 regulated agricultural activities as defined in section 49-201 and that  
9 are subject to best management practices pursuant to section 49-247 or  
10 by-products of livestock, range livestock and poultry as defined in  
11 section 3-1201, pesticide containers that are regulated pursuant to title  
12 3, chapter 2, article 6 or other agricultural crop residues.
- 13 (n) Household hazardous waste collection events held at a temporary  
14 site for not more than six days in any calendar quarter.
- 15 (o) Wastewater treatment facilities as defined in section 49-1201.
- 16 (p) An on-site ~~single-family~~ SINGLE-FAMILY household waste  
17 composting facility.
- 18 (q) A site at which five hundred or fewer waste tires are stored.
- 19 (r) A site at which mining industry off-road waste tires are stored  
20 or are disposed of as prescribed by rules in effect on February 1, 1996,  
21 until the director by rule determines that on-site recycling methods exist  
22 that are technically feasible and economically practical.
- 23 (s) A site at which underground piping, conduit, pipe covering or  
24 similar structures are abandoned in place in accordance with applicable  
25 state and federal laws.
- 26 30. "Solid waste landfill" means a facility, area of land or  
27 excavation in which solid wastes are placed for permanent disposal. Solid  
28 waste landfill does not include a land application unit, surface  
29 impoundment, injection well, compost pile or waste pile or an area  
30 containing ash from the on-site combustion of coal that does not contain  
31 household waste, household hazardous waste or conditionally exempt small  
32 quantity generator waste.
- 33 31. "Solid waste management" means the systematic administration of  
34 activities ~~which~~ THAT provide for the collection, source separation,  
35 storage, transportation, transfer, processing, treatment or disposal of  
36 solid waste in a manner that protects public health and safety and the  
37 environment and prevents and abates environmental nuisances.
- 38 32. "Solid waste management plan" means the plan ~~which~~ THAT is  
39 adopted pursuant to section 49-721 and ~~which~~ THAT provides guidelines for  
40 the collection, source separation, storage, transportation, processing,  
41 treatment, reclamation and disposal of solid waste in a manner that  
42 protects public health and safety and the environment and prevents and  
43 abates environmental nuisances.
- 44 33. "Storage" means the holding of solid waste.

1           34. "Transfer facility" means a site that is owned, operated or used  
2 by any person for the rehandling or storage for ninety days or less of  
3 solid waste that was generated off site for the primary purpose of  
4 transporting that solid waste. Transfer facility includes those  
5 facilities that include significant solid waste transfer activities that  
6 warrant the facility's regulation as a transfer facility.

7           35. "Treatment" means any method, technique or process used to  
8 change the physical, chemical or biological character of solid waste so as  
9 to render that waste safer for transport, amenable for processing,  
10 amenable for storage or reduced in volume.

11           36. "Vegetative waste" means waste derived from plants, including  
12 tree limbs and branches, stumps, grass clippings and other waste plant  
13 material. Vegetative waste does not include processed lumber, paper,  
14 cardboard and other manufactured products that are derived from plant  
15 material.

16           37. "Waste pile" means any noncontainerized accumulation of solid,  
17 nonflowing waste that is used for treatment or storage.

18           38. "Waste tire" does not include tires used for agricultural  
19 purposes as bumpers on agricultural equipment or as ballast to maintain  
20 covers at an agricultural site, or any tire disposed of using any of the  
21 methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8  
22 and 11 and means any of the following:

23           (a) A tire that is no longer suitable for its original intended  
24 purpose because of wear, damage or defect.

25           (b) A tire that is removed from a motor vehicle and is retained for  
26 further use.

27           (c) A tire that has been chopped or shredded.

28           39. "Waste tire facility" means a solid waste facility at which  
29 five thousand or more waste tires are stored outdoors on any day.

APPROVED BY THE GOVERNOR MAY 5, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 5, 2021.

**§ 49-202. Designation of state agency**

A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, adopting, modifying or repealing rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.

B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through I of this section. Subsections C, D, G and I of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through I of this section apply to the certification of applications for or notices of coverage under those permits.

C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for WOTUS established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of WOTUS. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.

D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may

deem any additional requests for supplemental information as a denial of certification for the purposes of subsection I of this section. In all other instances, the application is complete on submission of the information requested by the department.

F. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

G. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.

H. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order to make the determination required by subsections C and D of this section. Until these rules are adopted, the department shall require an applicant to submit only the following information for certification under this section:

1. The name, address and telephone number of the applicant.
2. A description of the project to be certified, including an identification of the WOTUS in which the certified activities will occur.
3. The project location, including latitude, longitude and a legal description.
4. A United States geological service topographic map or other contour map of the project area, if available.
5. A map delineating the ordinary high watermark of WOTUS affected by the activity to be certified.
6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to WOTUS from those activities.
7. A description of the materials being discharged to or placed in WOTUS.
8. A copy of the application for a federal permit or license that is the subject of the requested certification.

I. Pursuant to title 41, chapter 6, article 10 an applicant for certification may appeal a denial of certification or any conditions imposed on certification.

Any person who is or may be adversely affected by the denial of or imposition of conditions on the certification of a nationwide or general permit may appeal that decision pursuant to title 41, chapter 6, article 10.

J. Certification under section 401 of the clean water act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:

1. There is no disposal of construction and demolition wastes and contaminated wastewater.
2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.
3. Pollution from the operation of equipment in the mining area is removed and properly disposed.
4. Stockpiles of processed materials containing ten percent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. for the purposes of this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.
5. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.
6. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.

K. For the purposes of subsection J of this section, "ephemeral waters" means waters of the state that have been designated as ephemeral in rules adopted by the department.

L. Certification under section 401 of the clean water act is automatically granted for any license or permit required for:

1. Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
2. Response or remedial actions undertaken pursuant to chapter 2, article 5 of this title or pursuant to CERCLA.

3. Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

4. Other remedial actions that have been reviewed and approved by the appropriate government authority and taken pursuant to applicable federal or state laws.

M. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental quality may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as the director's duties are prescribed in this chapter.

N. The director and the department of environmental quality may enter into an interagency contract or agreement with the director of water resources under title 11, chapter 7, article 3 to implement the provisions of section 104 of CERCLA and to carry out the purposes of subsection M of this section.

**History:**

Amended by L. 2021, ch. 88,s. 2, eff. 9/29/2021. Amended by L. 2021, ch. 325,s. 3, eff. 9/29/2021.

**§ 49-203. Powers and duties of the director and department**

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:
  - (a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.
  - (b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
  - (c) Maintenance but not construction of drainage ditches.
  - (d) Construction and maintenance of irrigation ditches.
  - (e) Maintenance of structures such as dams, dikes and levees.
4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.
5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.
9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection B shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. For services provided under the dredge and fill permit program, a state agency shall pay either:
  - (a) The fees established by the department under the dredge and fill permit program.
  - (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.
10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.

13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1, 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter

to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

9. Adopt by rule a permit program for the discharge of dredged or fill material into WOTUS for purposes of implementing the permit program established by 33 United States Code section 1344.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection B, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the

**ARS 49-203 Powers and duties of the director and department  
(Arizona Revised Statutes (2022 Edition))**

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consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

**History:**

Amended by L. 2022, ch. 204,s. 1, eff. 9/23/2022. Amended by L. 2021, ch. 325,s. 5, eff. 9/29/2021. Amended by L. 2018, ch. 280,s. 2, eff. 8/3/2018. Repealed by L. 2018, ch. 225,s. 11, eff. August 1, 2023 unless the U.S. E.P.A. approves the department of environmental quality's clean water act section 406 . Amended by L. 2018, ch. 225,s. 4, eff. 8/3/2018. Amended by L. 2018, ch. 170,s. 1, eff. 8/3/2018.

**§ 49-221. Water quality standards in general; protected surface waters list**

A. The director shall:

1. Adopt, by rule, water quality standards for all WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses. For non-wotus protected surface waters, the director shall Apply surface water quality standards established as of January 1, 2021, until specifically changed by the director pursuant to Paragraph 2 of this subsection. Rules regarding the following shall Not be adopted or applied as water quality standards for non-wotus Protected surface waters:

(a) Antidegradation.

(b) antidegradation Criteria.

(c) outstanding arizona Waters.

2. Adopt, by rule, water quality standards for Non-wotus protected surface waters, by December 31, 2022, Consistent with paragraph 1 of this subsection and as determined Necessary in the rulemaking process. In adopting those standards, The director shall consider the unique characteristics of this State's surface waters and the economic, social and Environmental costs and benefits that would result from the Adoption of a water quality standard at a particular level or for a Particular water category.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider the following:

1. The protection of the public health and the environment.

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.
4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.
5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.
6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.
2. The uses that are being made or may be made of the reclaimed water.
3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration pursuant to title 3, chapter 3, article 4.1 of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

G. The director shall maintain and publish a protected Surface waters list. The department shall publish the initial list On the department's website and in the arizona administrative Register within thirty days after the effective date of this Amendment to this section. Not later than december 31, 2022, the Department shall adopt by rule the protected surface waters list, Including procedures for determining economic, social and Environmental costs and benefits. Publication of the list in the Arizona administrative register is an appealable agency action Pursuant to title 41, chapter 6, article 10 and may be appealed by Any party that provides evidence of an actual adverse effect that The party appealing the decision would suffer as a result of the Director's decision. All of the following apply to the Protected surface water list:

1. The protected surface waters list shall Include:

(a) All WOTUS.

(b) Any perennial, intermittent and Ephemeral reaches and any impoundments of the following rivers, not Including tributaries or reaches of waters wholly within tribal Jurisdiction or reaches of waters outside of the united States:

(i) The bill williams river, from the Confluence of the big sandy and santa maria rivers at 113°31'38.617"W, 34°18'22.373"N, To its Confluence with the colorado river at 114°8'9.854"W, 34°18'9.33"N.

(ii) The colorado river, from the Arizona-utah border at 111°32'35.741"W, 36°58'51.698"N, To the arizona-mexico border at 114° 43'12.564"W, 32°43'6.218"N.

(iii) The gila river, from the Arizona-new mexico border at 109°2'52.8"W, 32°41'11.2015"N, To the confluence with the colorado River at 114°33'28.145"W, 32°43'14.408"N.

(iv) The little colorado river, from The confluence of the east and west forks of the little colorado River at 109°28'7.131"W, 33°59'39.852"N, to its confluence with the colorado river at 111°49'4.693"W, 36°12'10.243"N.

(v) The salt river, from the Confluence of the black and white rivers at 110°13'39.5"W, 33°44'6.082"N, To the Confluence with the Gila river AT 112°18'5.704"W, 33°22'42.978"N.

(vi) The san pedro river, from the Arizona-mexico border at 110°9'1.704"W, 31°20'2.387"N, To the confluence with the gila river At 110°47'0.905"W, 32°59'5.671"N.

(vii) The santa cruz river, from its Origins in the canelo hills of southeastern arizona at 110°37'3.968"W, 31°27'39.21"N, To its Confluence with the Gila river AT 111°33'26.02"W, 32°41'39.058"N.

(viii) The verde river, from sullivan Lake at 112°28'10.588"W, 34°52'11.136"N, To its confluence with the Salt river at 111°39'48.32"W, 33°33'20.538"N.

(c) any non-wotus waters of the state That are added under paragraphs 3 and 4 of this Subsection.

2. notwithstanding paragraph 1 of this subsection, the Protected surface waters list shall not contain any of the Following non-WOTUS waters:

(a) Canals in the yuma project and Ditches, canals, pipes, impoundments and other facilities that are Operated by districts organized under Title 48, chapters 18, 19, 20, 21 and 22 and that are not used to directly deliver water for Human consumption, except when added pursuant to paragraph 4 of This subsection and in response to a written request from the owner And operator of the ditch or canal until the owner and operator Withdraws its request.

(b) irrigated areas, including fields Flooded for agricultural production.

(c) Ornamental and urban ponds and Lakes such as those owned by homeowners' associations and golf Courses, except when added pursuant to

paragraph 4 of this Subsection and in response to a written request from the owner of The ornamental or urban pond or lake until the owner withdraws its Request.

(d) swimming pools and other bodies Of water that are regulated pursuant to section 49 \_ 104, Subsection b.

(e) Livestock and wildlife water Tanks and aquaculture tanks that are not constructed within a Protected surface water.

(f) stormwater control features.

(g) Groundwater recharge, water reuse And wastewater recycling structures, including underground storage Facilities and groundwater savings facilities permitted under title 45, chapter 3.1 and detention and infiltration basins, except when Added pursuant to paragraph 4 of this subsection and in response to A written request from the owner of the groundwater recharge, water Reuse or wastewater recycling structure until the owner withdraws Its request.

(h) Water-filled depressions created As part of mining or construction activities or pits excavated to Obtain fill, sand or gravel.

(i) All waste treatment systems Components, including constructed wetlands, lagoons and treatment Ponds, such as settling or cooling ponds, designed to either convey Or retain, concentrate, settle, reduce or remove pollutants, either Actively or passively, from wastewater before discharge or to Eliminate discharge.

(j) Groundwater.

(k) Ephemeral waters except for those Prescribed in paragraph 1, subdivision (b) of This subsection.

(l) Lakes and ponds owned and managed By the united states department of defense and other surface waters Located on and that do not leave united states department of Defense property, except when added pursuant to paragraph 4 of this Subsection and in response to a written request from the united States department of defense until it withdraws its Request.

3. Unless listed in paragraph 2 of this subsection, the Director shall add the following non-wotus surface waters to the Protected surface waters list:

(a) all lakes, ponds and reservoirs That are public waters used as a drinking source, for recreational Or commercial fish consumption or for water-based

recreation such As swimming, wading and boating and other types of recreation in And on the water.

(b) Perennial waters or intermittent Waters of the state that are used as a drinking water source, Including ditches and canals.

(c) Perennial or intermittent Tributaries to the bill williams river, the colorado river, the Gila river, the little colorado river, the salt river, the san Pedro river, the santa cruz river and the verde river.

(d) Perennial or intermittent public Waters used for recreational or commercial fish Consumption.

(e) perennial or intermittent public Waters used for water-based recreation such as swimming, wading, Boating and other types of recreation in and on the Water.

(f) perennial or intermittent Wetlands adjacent to waters on the protected surface waters List.

(g) perennial or intermittent waters Of the state that cross into another state, the Republic of Mexico Or the reservation of a federally recognized tribe.

4. the director may add additional non-wotus surface Waters to the protected surface waters list if all of the following Apply:

(a) the water is not required to be Listed under paragraph 1 or 3 of this subsection.

(b) the water is not excluded under Paragraph 2 of this subsection.

(c) the economic, environmental and Social benefits of adding the water outweigh the economic, Environmental and social costs of excluding the water from the List.

5. the director shall remove any erroneously listed, Non-wotus waters from the protected surface waters list when the Water is excluded under paragraph 2 of this subsection and shall Not regulate discharges to those waters in the Interim.

6. the director shall remove non-wotus waters from the Protected surface waters list when the water is not required to be Listed under paragraph 3 of this subsection and the economic, Environmental and social benefits of removing the water outweigh The economic, environmental and social costs of retaining the water On the list.

7. the director, on an emergency basis, may add a water To the protected surface waters list if the director discovers an Imminent and substantial danger to public health or welfare or the Environment, if the water would otherwise qualify to be added under Paragraph 3 of this subsection. Notwithstanding any other law, the Emergency addition shall take effect immediately on the Director's determination that describes the imminent and Substantial danger in writing. Within thirty days after the Director's determination, the department shall publish a notice Of that determination in the arizona administrative register and on The department's website. Waters added under this subsection Shall be incorporated into the protected surface waters list during The next rulemaking that follows the addition.

**History:**

Amended by L. 2021, ch. 325,s. 7, eff. 9/29/2021. Amended by L. 2018, ch. 48,s. 46, eff. 8/3/2018.

**§ 49-222. Water quality standards for WOTUS**

A. Standards for the quality of WOTUS shall assure water quality, if attainable, which provides for protecting the public health and welfare, and shall enhance the quality of water taking into consideration its use and value for public water supplies, the propagation of fish and wildlife and recreational, agricultural, industrial and other purposes including navigation.

B. The director shall adopt standards for the quality of all WOTUS that establish numeric limitations on the concentrations of each of the toxic pollutants listed by the administrator pursuant to section 307 of the clean water act (33 United States Code section 1317).

C. In setting numeric standards for the quality of WOTUS, the director may consider the effect of local water quality characteristics on the toxicity of specific pollutants and the varying sensitivities of local affected aquatic populations to such pollutants, and the extent to which the natural flow of the stream is intermittent or ephemeral, as a result of which the instream flow consists mostly of treated wastewater effluent, except that such standards shall not, in any event, be inconsistent with the clean water act. In applying such standards the director may establish appropriate mixing zones.

**History:**

Amended by L. 2021, ch. 325,s. 8, eff. 9/29/2021.

**DEPARTMENT OF ENVIRONMENTAL EQUALITY**

Title 18 Chapter 11

**Amend:** R18-11-101, Appendix A- Table 1, Appendix B

**New Article:** Article 2

**New Section:** R18-11-201, R18-11-202, R18-11-203, R18-11-204, R18-11-205,  
R18-11-206, R18-11-207, R18-11-208, R18-11-209, R18-11-210,  
R18-11-211, R18-11-212, R18-11-213, R18-11-214, R18-11-215,  
R18-11-216, R18-11-217



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** October 21, 2022

**SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Title 18 Chapter 11,**

**Amend:** R18-11-101, Appendix A- Table 1, Appendix B

**New Article:** Article 2

**New Section:** R18-11-201, R18-11-202, R18-11-203, R18-11-204, R18-11-205,  
R18-11-206, R18-11-207, R18-11-208, R18-11-209, R18-11-210, R18-11-211,  
R18-11-212, R18-11-213, R18-11-214, R18-11-215, R18-11-216, R18-11-217,

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### **Summary:**

This regular rulemaking from the Arizona Department of Environmental Quality (Department) seeks to amend one (1) rule, two (2) Appendix, and one (1) Table; add one (1) New Article; and add seventeen (17) new sections in Title 18 Chapter 11, Article 1 related to Water Quality Standards for Surface Waters and Article 2 related to Water Quality Standards for Non-WOTUS Protected Surface Waters. This rulemaking proposes to protect thirty-five (35) non-Waters of the United States (WOTUS) surface waters via an Arizona specific program established by the Department that is similar to the Federal Clean Water Act.

### **1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

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

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

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

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

The Department indicates that it referenced and relied upon multiple studies in drafting these rules. Most of these studies contributed to the economic, small business, and consumer impact statements. The Department has provided a detailed list of its studies in section 7 of the preamble to their NFR.

4. **Summary of the agency's economic impact analysis:**

The Department indicates that HB2691 (2021) directs ADEQ to develop the Surface Water Protection Program (SWPP) and establish a variety of regulations by December 31, 2022. The Department further states that they are meeting that goal by adopting Title 18, Chapter 11, Article 2, titled "Water quality Standards for Non-WOTUS (waters of the United States) Protected Surface Waters." As part of the rulemaking to adopt standards for non-WOTUS protected surface areas, ADEQ must also modify the portions of the Arizona Administrative Code (A.A.C.) that houses the Arizona-specific rules to implement Federal Clean Water Act (CWA) requirements to the state. This rule making, according to the Department, modifies Title 18, Chapter 11, Article 1 to conform to the requirements of the statute and to ensure that the Federal and State programs can co-exist.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states they have developed the proposed WQS to comply with federal and state law, and to avoid federally promulgated WQS. The Department further states that water quality criteria must be based on sound scientific rationale to protect the designated use, and not economic considerations. ADEQ is not aware of any less intrusive or less costly alternative methods that would meet ADEQ's legal obligations.

6. **What are the economic impacts on stakeholders?**

The Department indicates this rulemaking could affect ADEQ, political subdivisions, public and private entities who wish to obtain an AZPDES permit for discharge to a listed surface water, public and private entities who may need to operate under an AZPDES general permit, and public and private laboratories that test for permit compliance. The Department believes the rulemaking will create health, social, and economic benefits to the general public from access to clean water and protection of fish and wildlife.

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

The Department indicates, between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking, changes were made to Appendix A; Appendix B; R18-11-201; R18-11-202, R18-11-210; R18-11-215; R18-11-216 Table A, Table B, Table C; R18-11-217. The Department has provided a detailed list of changes in section 10 of the preamble. Council staff does not believe these changes constitute as substantially different rules pursuant to A.R.S. § 41-1025.

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

The Department indicates that it received public comment during the formal comment period. These comments are grouped into three sections: commentary pertaining to how waters on the protected surface water list are regulated; commentary regarding the process used to determine the economic, social, and environmental cost benefit analysis (ESE); and commentary regarding typographical errors. In response to these comments, the Department modified text for clarity, corrected typographical errors, and is continuing to work with stakeholders regarding the ESE to ensure that their particular concerns are addressed.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that their regulations allow for many facilities to qualify for general permit, however those that do not qualify may be required to apply for an individual AZPDES permit.

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

The Department indicates that the rules are not more stringent than federal law, but that they apply to waters that may not be protected under federal law.

11. **Conclusion**

This regular rulemaking from the Arizona Department of Environmental Quality (Department) seeks to amend one (1) rule, two (2) Appendix, and one (1) Table; add one (1) New Article; and add seventeen (17) new sections in Title 18 Chapter 11, Article 1 related to Water Quality Standards for Surface Waters and Article 2 related to Water Quality Standards for Non-WOTUS Protected Surface Waters. The Department indicates this rule is being updated to provide protections for non-WOTUS surface waters in Arizona. The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

October 18, 2022

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, #305  
Phoenix, AZ 85007

Re: Rulemaking for Title 18. Environmental Quality, Chapter 11. Department of Environmental Quality - Water Quality Standards, Article 1 and Article 2; Title 18. Environmental Quality, Chapter 9. Department of Environmental Quality - Water Pollution Control, Article 9.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits two (2) Notices of Final Rulemaking to the Governor's Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for December 6, 2022. This rulemaking implements the new Arizona Surface Water Protection Program.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)

- a. The public record closed for all rules on October 17, 2022 at 11:59 p.m.
- b. The rulemaking activity does not relate to a five-year review report.
- c. The rulemaking activity does not establish a new fee; please see A.R.S. § 49-203(A)(9) for authority.
- d. An immediate effective date is not requested.
- e. The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- g. There will be no new full-time employees necessary to implement and enforce the rule before the rule is approved by the council, pursuant to A.R.S. § 41-1055(B)(3)(a).

- h. A list of documents enclosed under A.A.C. R1-6-201(A)(2) through (8), which are enclosed as electronic copies:
1. This cover letter.
  2. Two Notices of Final Rulemaking (NFRMs), including the preamble, table of contents, and text of each rule. The preambles contain:
    - a. an economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
    - b. comments received by the agency, both written and oral, concerning the proposed rule;
    - c. the general and specific statutes authorizing the rule, including relevant statutory definitions;
  3. No analyses were submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states;
  4. No material is incorporated by reference in this rulemaking;
  5. A list of statutes or other rules referred to in the definitions.

Thank you for your timely review and approval. Please contact Jonathan Quinsey, Legal Specialist, Water Quality Division, 602-771-8193 or [quinsey.jonathan@azdeq.gov](mailto:quinsey.jonathan@azdeq.gov), if you have any questions.

Sincerely,  
**DocuSigned by:**



Misael Cabrera, P.E.  
D75AE75569754AE...  
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R18-11-101	Amend
Appendix A	Amend
Table 1	Amend
Appendix B	Amend
Article 2	New Article
R18-11-201	New Section
R18-11-202	New Section
R18-11-203	New Section
R18-11-204	New Section
R18-11-205	New Section
R18-11-206	New Section
R18-11-207	New Section
R18-11-208	New Section
R18-11-209	New Section
R18-11-210	New Section
R18-11-211	New Section
R18-11-212	New Section
R18-11-213	New Section
R18-11-214	New Section
R18-11-215	New Section
R18-11-216	New Section
R18-11-217	New Section

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing Statute: A.R.S. §§49-202(A), 49-203(A)(1)

Implementing Statute: A.R.S. §§ 49-221, 49-222

**3. The effective date of the rule:**

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

**b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

**4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 28 A.A.R. 125, January 7, 2022.

Notice of Proposed Rulemaking: 28 A.A.R. 2329, September 16, 2022.

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Jonathan Quinsey  
Address: Department of Environmental Quality  
1110 W. Washington St.  
Phoenix, AZ 85007  
Telephone: (602) 771-8193  
Email: Quinsey.Jonathan@azdeq.gov or PSWL@azdeq.gov  
Website: <http://www.azdeq.gov/swpp>

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

**Background**

Historically, a broad spectrum of Arizona’s lakes, ponds, streams and wetlands have been protected under the Federal Clean Water Act (CWA). This protection includes regulating the discharge of pollutants to surface waters via the Arizona Pollution Discharge Elimination System (AZPDES). AZPDES has only been implemented to regulate discharges into “waters of the United States” (WOTUS).

The CWA does not define WOTUS, instead, it provides discretion for the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) to define WOTUS in their rules. Courts have heard a number of cases and issued rulings that effectively modify the extent of federal jurisdiction, and different Federal administrations have attempted to change the definition as well. Arizona leadership created the Surface Water Protection Program (SWPP) to provide clear and consistent regulation for stakeholders despite these changes to the jurisdictional reach of the Federal CWA. The SWPP is the result of a rigorous public process that has resulted in this effort to create a radically simple but effective approach to protect important state waters that are not WOTUS and therefore would not receive the protections of a WOTUS.

House Bill 2691 (2021) directs ADEQ to develop the SWPP and establish a variety of regulations by December 31, 2022. ADEQ is meeting that goal in this rulemaking by adopting Title 18, Chapter 11, Article 2 titled “Water Quality Standards for Non-WOTUS Protected Surface Waters.” As part of the rulemaking to adopt standards for non-WOTUS protected surface waters, ADEQ must also modify the portion of the Arizona Administrative Code (A.A.C) that houses the Arizona-specific rules to implement Federal CWA requirements in the State. This rulemaking modifies Title 18, Chapter 11, Article 1 to conform with the requirements of the statute and to ensure that the Federal and State programs can co-exist. Additionally, this edition of the Arizona Administrative Register also includes a separate action which modifies Title 18, Chapter 9, Article 9 which contains the permitting program that implements the standards in Title 18, Chapter 11, Articles 1 and 2.

The scope of the SWPP rulemaking has changed since the initial legislation was passed. The original intent of the SWPP was to fill the gap between the Pre-2015 WOTUS definition and the Navigable Waters Protection Rule (NWPR). In August of 2021, the NWPR was vacated, removing the gap in regulation that the SWPP program was originally intended to fill. Still, ADEQ cannot overstate the importance of building a state-level program to protect surface waters and provide certainty to stakeholders about the future of surface waters in Arizona. At the time of this submission there is more change to the WOTUS definition on the horizon. The EPA is in the process of working on another new WOTUS rule through the regulatory process, and the Supreme Court has granted certiorari on a case that could impact how ADEQ implements the existing pre-2015 rule.

ADEQ wants to be clear in this preamble that both of those actions could have an impact on Arizona's regulatory programs for surface water, as well as the rules adopted in this rulemaking.

### **Rulemaking Summary**

This Notice of Final Rulemaking proposes to protect 35 non-WOTUS waters, 33 of which were previously listed on Appendix B of Article 1. Additionally, it adopts water quality-based standards that apply to those waters. The SWPP creates a dual-pronged approach for regulating surface water in Arizona. Waters that are considered Waters of the United States (WOTUS) will be regulated under the CWA program that is codified in Title 18, Chapter 11, Article 1 of the Arizona Administrative Code. Surface waters that are not WOTUS, but qualify to be listed on the Protected Surface Waters List (PSWL) as non-WOTUS protected surface waters, will be regulated by an Arizona-specific program established by ADEQ in this rulemaking in Title 18, Chapter 11, Article 2.

These two programs will exist in tandem, but a surface water reach will only be regulated by either the Federal program or the SWPP. There will be no joint jurisdiction of surface waters. During this initial SWPP rulemaking, ADEQ is striving to keep the two programs as similar as possible to provide consistency and clarity to permittees while the legal reach of the Federal CWA is in flux. The similarities between the two programs will ensure the original goal of the SWPP is met, and an ever-changing Federal definition of WOTUS will not result in significant compliance issues in Arizona as waters change between being regulated by the Federal program or the State program.

This NFRM is divided into two sections. The first section addresses the changes to Article 1, or the Federal portion of the program that is subject to EPA review. The second section explains the adoption of the new state program.

### **Modifications to the CWA Program - Article 1**

Section 303(c) of the CWA requires that all states adopt and maintain water quality standards. Adopting water quality standards allows the state to assess the health of Arizona waters and provides a legal basis for controlling pollutants entering a protected surface water. Arizona Revised Statutes (A.R.S.) § 49-222 provides the state-level authorization for ADEQ to adopt those water quality standards.

ADEQ uses the adopted water quality standards as the backbone of Arizona's implementation of the federal permitting program implemented by ADEQ that's called AZPDES. The AZPDES program provides permits for discharges to WOTUS that limit the additions of pollutants to those surface waters using five general types of provisions:

1. Technology-based effluent limitations;
2. Water-quality-based effluent limitations;
3. Monitoring and reporting requirements;
4. "Boilerplate" conditions;
5. Special conditions, for example, site-specific standards that are applicable.

#### Designated Uses

Arizona's water quality standards under the CWA designate specific uses and then establish standards to protect those uses. The designated uses of a surface water are the most fundamental articulation of the use attainment goal in Arizona's aquatic or human environment. These adopted uses express goals for the water, such as supporting aquatic life and human activities. The concept of protected surface waters having designated uses is central to establishing appropriate water quality standards. Arizona's "menu" of designated uses listed at R18-11-104(B) provides for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water. The current ADEQ-adopted designated uses are:

1. Domestic water source (DWS),
2. Fish consumption (FC),
3. Full body contact recreation (FBC),
4. Partial body contact recreation (PBC),
5. Aquatic and wildlife (cold water) (A&Wc),
6. Aquatic and wildlife (warm water) (A&Ww),
7. Aquatic and wildlife (effluent-dependent water) (A&Wedw),
8. Aquatic and wildlife (ephemeral water) (A&We),
9. Agricultural irrigation (AgI), and
10. Agricultural livestock watering (AgL).

ADEQ's four subcategories of aquatic and wildlife designated uses are meant to protect fish, shellfish, plants and wildlife (A&Wc, A&Ww, A&Wedw, and A&We). The A&We use is assigned based on the flow characteristics of the water itself. The A&Wedw use is assigned for waters that receive a permitted discharge. The A&Wc and A&Ww are assigned based on the relative elevation of the water, as well as the flow regime of the water. Intermittent and perennial protected surface waters located above 5000' are assigned the A&Wc use and those below 5000' are assigned the A&Ww use.

ADEQ protects water quality for "recreation in and on the water" with the full-body contact recreation (FBC) and partial body contact recreation (PBC) designated uses. These designated uses are intended to maintain and protect water quality for swimming, water-skiing, boating, wading, fishing, and other recreational uses. The FBC designated use is intended to protect public health when people engage in recreational activities that may involve full submergence in the water and likely ingestion of the water. The PBC designated use is intended to protect public health when people engage in water-based recreational activities where full submergence and ingestion of the water are unlikely such as wading or boating. The FC designated use is intended to protect human health when fish or other aquatic organisms are taken from a surface water for human consumption.

ADEQ has considered the use and value of surface waters for public water supply by establishing the domestic water source (DWS) designated use. The DWS designated use applies to a surface water that is used as a raw water source for drinking water supply. The water quality criteria for the DWS designated use were developed assuming that treatment is necessary to yield drinking water suitable for human consumption. The DWS designated use applies to a surface water that has a water intake located along it which uses the surface water as a raw water source.

Finally, ADEQ recognizes the use and value of surface waters for agricultural purposes by establishing the agricultural irrigation (AgI) and agricultural livestock watering (AgL) designated uses. These uses are intended to maintain and protect surface water quality so water can be used for crop irrigation or to water cattle and other livestock.

### Water Quality Criteria

The term "criteria" is used when referencing water quality standards in a few different ways. The term is a

reference to a specific part of a state water quality standard – that is, a water quality standard is composed of designated uses and the water quality criteria necessary to protect those uses. When Arizona adopts specific criteria they become the applicable regulatory requirements for protected waters. Criteria to protect designated uses in Arizona are expressed in three ways:

1. Chemical-specific concentrations;
2. Toxicity levels; or
3. Narrative statements representing a quality of water that supports a particular use of a surface water.

#### Chemical-Specific and Toxicity Criteria

The most direct way ADEQ protects a listed designated use is by adopting numeric surface water standards that establish specific limits on the concentrations of pollutants that will protect and maintain that use. ADEQ adopts criteria recommendations for pollutants when they are listed by the EPA as either a toxic pollutant, priority pollutant, or other type of regulated substance. When EPA lists a pollutant, they also publish an analytical test methodology that ADEQ can use to set numeric criteria that are appropriate for Arizona. These individual pollutant parameters are listed in A.A.C. Title 18, Chapter 11, Article 1, Appendix A, and R18-11-109. In adopting numeric water quality standards, ADEQ considers:

1. The effect of unique local water quality characteristics on the toxicity of pollutants;
2. The varying sensitivities of local affected aquatic populations to these pollutants; and
3. The extent to which the stream's natural flow is perennial, intermittent, effluent-dependent, or ephemeral.

#### Arizona Water Quality Standards Current State

ADEQ revises existing water quality standards under a timetable established by the CWA. The CWA requires the agency to review A.A.C. Title 18, Chapter 11, Article 1, once every three years. This process is called the triennial review. ADEQ makes modifications to Arizona's WOTUS water quality standards through the State's rulemaking process, however, those changes don't take effect until EPA approval is received. EPA is required to review any modifications ADEQ makes to Article 1 water quality standards and approves the standards that meet the requirements of the CWA.

The EPA must approve or disapprove ADEQ's standards within a set amount of time established in the CWA and implementing regulations. If EPA approves ADEQ's submitted standards, the EPA must notify ADEQ within 60 days of receiving the submittal of Arizona's standards, rules, and supporting documentation. If EPA disapproves of Arizona's surface water quality standards, it must do so within 90 days of receiving the complete submittal of the surface water quality standards rules. If the Regional Administrator disapproves a water quality standard, EPA must notify ADEQ, specifying:

1. Why the state standards are not in compliance with the CWA, and
2. The revisions ADEQ must make to its standards to assure compliance with the CWA before EPA could fully approve the standards. Under § 303(c)(4) of the CWA, EPA must federally promulgate water quality standards no later than 90 days after the date of notice of the disapproval described above if ADEQ does not adopt the necessary revisions as specified by EPA within that time.

ADEQ completed its obligation and submitted the regulatory modifications made during the 2019 triennial review to the EPA on November 19, 2019 (2019 TR). During the review process, EPA signaled to ADEQ that a non-trivial number of individual pollutant parameters developed by ADEQ and listed in A.A.C. Title 18, Chapter 11, Article 1, Appendix A, Table 1 for certain designated uses would be disapproved as they did not meet the requirements of the CWA.

ADEQ submitted a request to formally withdraw portions of the 2019 Triennial Review on December 21, 2021. Specifically, ADEQ withdrew modifications of the individual pollutant parameters established in Appendix A, Table 1 for the domestic water source, fish consumption, full-body contact, and partial body contact designated uses from review. The EPA signaled that the Federal government could not approve these standards for individual pollutants due to incorrect assumptions ADEQ made during their development. ADEQ is committed to resolving those issues before submitting the next triennial review package to the EPA.

As part of the EPA's concurrence with ADEQ's partial withdrawal of the 2019 TR, EPA took additional action to approve some changes to water quality standards (WQS) in the 2019 TR that ADEQ did not withdraw. EPA approved the revisions to the definitions, antidegradation, mixing zones, and variance standards adopted in 2019 on January 24, 2022. The EPA also approved portions of ADEQ's submittal that made minor formatting revisions and other corrections that were non-substantive.

The EPA has not acted in full on the changes to the 2019 TR individual pollutant parameters in Appendix A, Table 1 for the aquatic and wildlife cold, aquatic and wildlife warm, aquatic and wildlife ephemeral, aquatic and wildlife effluent-dependent water, agricultural irrigation, and agricultural livestock watering designated uses. EPA has communicated to ADEQ that they are waiting on the United States Fish and Wildlife Service to complete a consultation as to whether ADEQ’s new standards are protective enough of Arizona’s threatened and endangered species. EPA has approved some water quality standards submitted during the 2019 TR but not all.

The above facts have left Arizona with a patchwork of effective standards to apply to WOTUS, as illustrated below. Specifically:

1. For the domestic water source, fish consumption, full-body contact, and partial body contact designated uses, the individual pollutant parameters from Arizona’s 2016 Triennial Review will apply until modified and approved by the EPA in an upcoming Arizona action.
2. For all aquatic and wildlife uses and agricultural irrigation use, the individual pollutant parameters from Arizona’s 2016 triennial review are currently effective until EPA approves the modifications made during the 2019 TR.
3. Narrative standards and changes made to the definitions, antidegradation, mixing zone, and variance portions of Arizona’s water quality standards in the 2019 TR are currently effective.

<b>Effective Version of Recently Changed Standards For WOTUS</b>		
<b>Standard</b>	<b>Current Effective Version of Standards 4/1/2022</b>	<b>The version of Standards Expected to be Effective when SWPP is Adopted</b>
<b>Individual Parameters for Domestic Water Source Use</b>	2016	2016
<b>Individual Parameters for Fish Consumption</b>	2016	2016
<b>Individual Parameters for Full-Body Contact</b>	2016	2016

<b>Individual Parameters for Partial Body Contact</b>	2016	2016
<b>Individual Parameters for Aquatic and Wildlife Uses</b>	2016	2019*
<b>Individual Parameters for Agricultural Irrigation Use</b>	2016	2019*
<b>Individual Parameters for Agricultural Livestock Use</b>	2016	2019*
<b>R18-11-101. Definitions</b>	2019	2019
<b>R18-11-107. Antidegradation</b>	2019	2019
<b>R18-11-114. Mixing Zones</b>	2019	2019
<b>R18-11-122. Variances</b>	2019	2019

\*Dependent on USFWS review and EPA approval.

***Arizona Water Quality Standards after this Rulemaking***

This rulemaking revises Article 1 to align the individual criteria for pollutants that are published in the Arizona Administrative Code with the 2016 EPA-approved criteria. The 2019 water quality criteria that ADEQ is modifying were never approved and never took effect in the state. The tables below explicate the changes to the Arizona Administrative Code that will be made to align ADEQ’s Article 1 rules with currently approved WQS.

Drinking Water Source Standards Alignment:

Parameter	CAS NUM	EPA Approved 2016 DWS standard (µg/L)	Withdrawn 2019 DWS standard (µg/L)
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Acenaphthylene	208968	NA	420
Acrylonitrile	107131	0.06	0.006
Bis(2-chloroethoxy) methane	111911	NA	21
Bis(chloromethyl) ether	542881	NA	0.00015
Chloroethane	75003	NA	280
Chloronaphthalene beta	91587	560	2240
Chromium III	16065831	NA	10500
Dibenz (ah) anthracene	53703	0.005	0.350
Dibromoethane, 1,2-	106934	0.05	0.02
Dinitro-o-cresol, 4,6-	534521	28.0	0.6
Di-n-octyl phthalate	117840	2800	70
Endrin Aldehyde	7421933	NA	2
Guthion	86500	NA	21
Hexachloroethane	67721	2.5	0.9
Indeno (1,2,3 cd) pyrene	193395	0.05	0.4
Nickel	7440020	140 T	210 T
Nitrobenzene	98953	3.5	14
Nitrosodibutylamine	924163	NA	0.006
Nitrosodiethylamine	55185	NA	0.0002
N-nitrosodi-n-phenylamine	86306	0.005	7.1
N-nitrosodi-n-propylamine	621647	7.1	0.005
N-nitrosopyrrolidine	930552	NA	0.02
Parathion	56382	NA	42
Pentachlorobenzene	608935	NA	6
Tetrachlorobenzene, 1,2,4,5-	95943	NA	2.1
Trichlorophenol, 2,4,5-	95954	NA	700

Fish Consumption (FC) Alignment:

Parameter	CAS NUM	EPA Approved 2016 FC standard (µg/L)	Withdrawn 2019 FC standard (µg/L)
Benzene	71432	140	114
Benzo (a) pyrene	50328	0.02	0.1
Cadmium	7440439	84 T	6 T

Carbon tetrachloride	56235	2	3
Chloroform	67663	470	2133
Chloronaphthalene beta	91587	317	1267
Chlorpyrifos	2921882	N/A	1.0
Cyanide (as free cyanide)	57125	16,000 T	504 T
DDT and break down products	72548	0.0002	0.0003
Dichloromethane	75092	593	2222
Dinitro o cresol 4,6	534521	582	12
Dinoseb	88857	N/A	12
Diquat	85007	N/A	176
Endothall	145733	N/A	16000
Endrin Aldehyde	7421933	N/A	0.06
Guthion	86500	N/A	92
Hexachlorocyclohexane gamma	58999	1.8	5
Hexachlorocyclopentadiene	77474	580	74
Hexachloroethane	67721	3.3	1
Indeno (1,2,3cd) pyrene	193395	0.5	1
Malathion	121755	N/A	103
Mirex	2385855	N/A	0.0002
Nickel	7440020	4,600 T	511 T
Nitrobenzene	98953	138	554
Nitrosodibutylamine	924163	N/A	0.2
Nitrosodiethylamine	55185	N/A	0.1
Nitrosopyrrolidine	930552	N/A	34
Parathion	56382	N/A	16
Pentachlorophenol	87865	1,000	111
Permethrin	52645531	N/A	77
Picloram	26952205	2,710	1806
Tetrachlorodibenzopdioxin 2,3,7,8	1746016	5.00E-09	0.0000001
Tetrachloroethane 1,1,2,2	79345	4	32000
Tetrachloroethylene	127184	261	62
Thallium	7440280	7.2 T	0.07 T
Toluene	108883	201,000	11963
Tributyltin	688733	N/A	0.08
Trichloroethane 1,1,1	71556	428,571	285714

Full Body Contact (FBC) Alignment:

Parameter	CAS NUM	EPA Approved 2016 FBC standard (µg/L)	Withdrawn 2019 FBC standard (µg/L)
Acenaphthylene	208968	NA	56000
Acrylonitrile	107131	3	9
Aldrin	309002	0.08	0.27
Barium	7440393	98,000 T	186667 T
Benzene	71432	93	133
Benzofluoranthene 3,4	205992	1.9	47.0
Benzidine	92875	0.01	0.02
Benzo (a) anthracene	56553	0.2	47.0
Benzo (a) pyrene	50328	0.2	47.0
Benzo (k) fluoranthene	207089	1.9	47.0
Bis(2-chloroethoxy) methane	111911	NA	2800
Bis(chloroethyl) ether	111444	1	4.0
Bis(Chloromethyl) ether	542881	NA	0.02
Bromoform	75252	180	591
Cadmium	7440439	700 T	467 T
Carbon tetrachloride	56235	11	67
Chlordane	57749	4	13
Chlorine (total residual)	7782505	4000	93333
Chloroethane	75003	NA	93333
Chloroform	67663	230	9333
Chloronaphthalene beta	91587	74667	298667
Chromium (Total)	7440473	NA	100 T
Chrysene	218019	19	0.6
Cyanide (as free cyanide)	57125	18,667 T	588 T
DDT and break down products	72548	4	14
Di(2ethylhexyl) phthalate	117817	100	333
Di(2-ethylhexyl)adipate	103231	560000	3889
Dibenz (ah) anthracene	53703	1.9	47.0
Dibromoethane 1,2	106934	8400	2
Dichlorobenzene, 1,4-	106467	373333	373

Dichlorobenzidine 3,3'	91941	3	10
Dichloroethylene cis 1,2	156592	70	1867
Dichloromethane	75092	190	2333
Dichloropropene 1,3	542756	420	93
Dieldrin	60571	0.09	0.3
Dinitro o cresol 4,6	534521	NA	75
Dinitrotoluene 2,6	606202	2	7
Di-n-octyl phthalate	117840	373333	9333
Diphenylhydrazine 1,2	122667	1.8	6
Endrin	72208	280	1120
Endrin Aldehyde	7421933	NA	1120
Guthion	86500	NA	2800
Heptachlor	76448	0.4	1
Heptachlor epoxide	1024573	0.2	0.5
Hexachlorobenzene	118741	1	3
Hexachlorobutadiene	87683	18	60
Hexachlorocyclohexane alpha	319846	0.22	0.7
Hexachlorocyclohexane beta	319857	0.78	3
Hexachlorocyclopentadiene	77474	9800	11200
Hexachloroethane	67721	100	117
Hexochlorocyclohexane gamma	58999	280	700
Indeno (1,2,3cd) pyrene	193395	1.9	47
Isophorone	78591	1500.0	4912
Methoxychlor	72435	4667	18667
N nitrosodi n propylamine	621647	290	0.7
Nitrobenzene	98953	467	1867
Nitrosodibutylamine	924163	NA	0.9
Nitrosodiethylamine	55185	NA	0.03
Nitrosopyrrolidine	930552	NA	2
Nnitrosodimethylamine	62759	0.03	0.09
Nnitrosodiphenylamine	86306	0.2	952
Parathion	56382	NA	5600
Pentachlorobenzene	608935	NA	747
Polychlorinatedbiphenyls	1336363	19	2
Tetrachlorobenzene, 1,2,4,5-	95943	NA	280
Tetrachlorodibenzopdioxin 2,3,7,8	1746016	0.00003	0.0007
Tetrachloroethane 1,1,2,2	79345	7	23
Tetrachloroethylene	127184	9333	2222

Thallium	7440280	75 T	9 T
Toluene	108883	280000	149333
Toxaphene	8001352	1.3	4
Tributyltin	688733	NA	280
Trichloroethane 1,1,2	79005	25	82
Trichloroethylene	79016	280000	101
Trichlorophenol 2,4,6	88062	130	424
Trichlorophenol, 2,4,5-	95954	NA	93333
Trichlorophenoxy propionic acid 2(2,4,5	93721	7467	29867
Vinyl chloride	75014	2	6

Partial Body Contact (PBC) Alignment:

Parameter	CAS NUM	EPA Approved 2016 PBC standard (µg/L)	Withdrawn 2019 PBC standard (µg/L)
Acenaphthylene	208968	N/A	56000
Barium	7440393	98,000 T	186667 T
Benzo (a) anthracene	56553	0.2	280
Benzfluoranthene 3,4	205992	1.9	280
Benzo (a) pyrene	50328	0.2	280
Benzo (k) fluoranthene	207089	1.9	280
Bis(2-chloroethoxy) methane	111911	N/A	2800
Bis(chloroethyl) ether	111444	1	4
Cadmium	7440439	700 T	467 T
Carbon tetrachloride	56235	980	3733
Chlorine (total residual)	7782505	4000	93333
Chloroethane	75003	N/A	93333
Chloronaphthalene beta	91587	74667	298667
Chromium (Total)	7440473	N/A	100 T
Chrysene	218019	19	0.6
Cyanide	57125	18,667 T	588 T
Dibenz (ah) anthracene	53703	1.9	280
Dichlorobenzidine 3,3'	91941	3	10

Dichloroethylene cis 1,2	156592	70	1867
Dichloromethane	75092	56000	5600
Dinitro o cresol 4,6	534521	3.733	75
Dinitrotoluene 2,6	606202	3733	280
Di-n-octyl phthalate	117840	373333	9333
Diphenylhydrazine 1,2	122667	1.8	6
Endrin Aldehyde	7421933	N/A	280
Guthion	86500	N/A	2800
Hexachlorocyclohexane gamma	58999	280	700
Hexachlorocyclopentadiene	77474	9800	11200
Hexachloroethane	67721	933	653
Indeno (1,2,3cd) pyrene	193395	1.9	47
Mirex	2385855	187	0.26
Nitrobenzene	98953	467	1867
Nnitrosodimethylamine	62759	0.03	0.09
N nitrosodi n propylamine	621647	290	0.7
Nnitrosodiphenylamine	86306	88667	952
Parathion	56382	N/A	5600
Pentachlorobenzene	608935	N/A	747
Pentachlorophenol	87865	28000	4667
1,2,4,5-Tetrachlorobenzene	95943	N/A	280
Tetrachloroethane 1,1,2,2	79345	56000	186667
Tetrachloroethylene	127184	9333	5600
Thallium	7440280	75 T	9 T
Toluene	108883	280000	149333
Toxaphene	8001352	933	1867
Tributyltin		N/A	280
Trichloroethylene	79016	280	467
2,4,5-Trichlorophenol	95954	N/A	93333
Trichlorophenoxy) propionic acid 2(2,4,5	93721	7467	29867

### Aquatic and Wildlife Standards After the SWPP Rulemaking

In this rulemaking ADEQ has retained some other standards from the 2019 TR that have not yet been approved by the EPA. Specifically, the individual pollutant parameters for Aquatic and Wildlife and Agricultural uses.

EPA has communicated to ADEQ that US Fish and Wildlife Service is still doing an Endangered Species Act (ESA) analysis on those changes. EPA originally had expected that review to be finished sometime in the summer.

The EPA has not completed their review by the time of publication of this rulemaking. ADEQ must complete the SWPP rulemaking by the end of the year. ADEQ has reviewed standards not yet reviewed by the EPA and has re-promulgated the most scientifically viable standards to protect the uses they are associated with. ADEQ's actions in this regard will help insulate AZPDES permittees from any potential ESA liability. ADEQ is working with EPA to maintain the aquatic and wildlife criteria that the agency set during the 2019 TR. This rulemaking makes no modifications to those standards. The agency will continue to follow up with stakeholders regarding standards throughout the rulemaking process.

**Appendix B Changes**

ADEQ has invested considerable resources in making WOTUS evaluations during this rulemaking. For a water to be protected as an Article 2 water under the state program adopted in this rulemaking, ADEQ must make a determination that the water is not protected under our federal program in Article 1.

ADEQ's work product beyond this functional rulemaking includes developing a brand-new internal database that aggregates all the data ADEQ has gathered that can be used for WOTUS evaluations and producing non-WOTUS reports for each state-protected water that have been published to our website alongside the draft rules. Each one of these non-WOTUS reports have been informally reviewed by the EPA before the publication of this NFRM. EPA has taken no affirmative or opposing action with regard to the non-WOTUS reports ADEQ has published and has simply responded to most non-WOTUS reports with a "no comment" designation. After the SWPP rulemaking is complete all Appendix B changes, which includes removing non-WOTUS waters, will be submitted to the EPA for final action pursuant to EPA's authorities under CWA sections 303(c) and (d).

Stakeholders can review all associated non-WOTUS reports at [azdeq.gov/SWPP](http://azdeq.gov/SWPP). This rulemaking removes the following waters and their associated designated uses from Appendix B:

Water	Surface	Segment Description and Location (Latitude	Lake	Aquatic and Wildlife	Human Health	Agricultural
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shed	Waters	and Longitudes are in NAD 83)	Category	A&Wc	A&Ww	A&We	A&Wed	FBC	PBC	DWS	FC	AgI	AgL
							w						
CG	Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/113°35'31"		A&Wc				FBC			FC		AgL
CG	Cottonwood Creek	Below confluence with unnamed tributary to confluence with Truxton Wash			A&Ww			FBC			FC		AgL
CG	Red Lake	35°40'03"/114°04'07"			A&Ww			FBC			FC		AgL
CG	Rock Canyon	Headwaters to confluence with Truxton Wash				A&We			PBC				
CG	Truxton Wash	Headwaters to Red Lake				A&We			PBC				
CG	Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/113°30'40"		A&Wc				FBC			FC		AgL
CG	Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash			A&Ww			FBC			FC		AgL
CL	Wellton Ponds	32°40'32"/114°00'26"			A&Ww			FBC			FC		
CL	Yuma Proving Ground Pond	32°50'58"/114°26'14"			A&Ww			FBC			FC		
LC	Boot Lake	34°58'54"/111°20'11"	Igneous	A&Wc				FBC			FC		AgL
LC	Camillo Tank	34°55'03"/111°22'40"	Igneous		A&Ww			FBC			FC		AgL
LC	Dry Lake (EDW)	34°38'02"/110°23'40"	EDW				A&Wed		PBC				
LC	Little Ortega Lake	34°22'47"/109°40'06"	Igneous	A&Wc				FBC			FC		
LC	Mineral Creek	Headwaters to Little Ortega Lake		A&Wc				FBC			FC	AgI	AgL
LC	Mormon Lake	34°56'38"/111°27'25"	Shallow	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Phoenix Park Wash	Headwaters to Dry Lake				A&We			PBC				
LC	Potato Lake	35°03'15"/111°24'13"	Igneous	A&Wc				FBC			FC		AgL
LC	Pratt Lake	34°01'32"/109°04'18"	Sedimentary	A&Wc				FBC			FC		
LC	Sponseller Lake	34°14'09"/109°50'45"	Igneous	A&Wc				FBC			FC		AgL
LC	Unnamed Wash (EDW)	Black Mesa Ranger Station WWTP outfall at 34°23'35"/110°33'36" to confluence of Oklahoma Flat Draw					A&Wed		PBC				
LC	Vail Lake	35°05'23"/111°30'46"	Igneous	A&Wc				FBC			FC		AgL

LC	Water Canyon Reservoir	34°00'16"/109°20'05"	Igneous		A&Ww			FBC			FC	AgL	AgL
MG	Alvord Park Lake	35th Avenue & Baseline Road, Phoenix at 33°22'23"/112°08'20"	Urban		A&Ww				PBC		FC		
MG	Bonsall Park Lake	59th Avenue & Bethany Home Road, Phoenix at 33°31'24"/112°11'08"	Urban		A&Ww				PBC		FC		
MG	Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/111°56'19"	Urban		A&Ww				PBC		FC		
MG	Cortez Park Lake	35th Avenue & Dunlap, Glendale at 33°34'13"/112°07'52"	Urban		A&Ww				PBC		FC	AgL	
MG	Desert Breeze Lake	Galaxy Drive, West Chandler at 33°18'47"/111°55'10"	Urban		A&Ww				PBC		FC		
MG	Dobson Lake	Dobson Road & Los Lagos Vista Avenue, Mesa at 33°22'48"/111°52'35"	Urban		A&Ww				PBC		FC		
MG	Encanto Park Lake	15th Avenue & Encanto Blvd., Phoenix at 33°28'28"/112°05'18"	Urban		A&Ww				PBC		FC	AgL	
MG	Granada Park Lake	6505 North 20th Street, Phoenix at 33°31'56"/112°02'16"	Urban		A&Ww				PBC		FC		
MG	Maricopa Park Lake	33°35'28"/112°18'15"	Urban		A&Ww				PBC		FC		
MG	Riverview Park Lake	Dobson Road & 8th Street, Mesa at 33°25'50"/111°52'29"	Urban		A&Ww				PBC		FC		
MG	Roadrunner Park Lake	36th Street & Cactus, Phoenix at 33°35'56"/112°00'21"	Urban		A&Ww				PBC		FC		
SP	Big Creek	Headwaters to confluence with Pitchfork Canyon			A&Wc			FBC			FC		AgL
SP	Bull Tank	32°31'13"/110°12'52"			A&Ww			FBC			FC		AgL
SP	Fly Pond	Fort Huachuca Military Reservation at 31°32'53"/110°21'16"			A&Ww			FBC			FC		
SP	Goudy Canyon Wash	Headwaters to confluence with Grant Creek			A&Wc			FBC			FC		AgL
SP	Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/109°56'37"			A&Wc			FBC		DWS	FC		AgL
SP	Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww			FBC			FC		AgL
SP	High Creek	Headwaters to confluence with unnamed			A&Wc			FBC			FC		AgL

		tributary at 32°33'08"/110°14'42"											
SP	High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww			FBC			FC		AgL
SP	Lake Cochise (EDW)	South of Twin Lakes Municipal Golf Course at 32°13'50"/109°49'27"	EDW				A&Wedw		PBC				
SP	Moonshine Creek	Headwaters to confluence with Post Creek			A&Wc			FBC			FC		AgL
SP	Pinery Creek	Headwaters to State Highway 181			A&Wc			FBC		DWS	FC		AgL
SP	Pinery Creek	Below State Highway 181 to terminus near Willcox Playa			A&Ww			FBC		DWS	FC		AgL
SP	Post Creek	Headwaters to confluence with Grant Creek			A&Wc			FBC			FC	AgL	AgL
SP	Riggs Lake	32°42'28"/109°57'53"	Igneous		A&Wc			FBC			FC	AgL	AgL
SP	Rock Creek	Headwaters to confluence with Turkey Creek Alc						FBC			FC		AgL
SP	Snow Flat Lake	32°39'10"/109°51'54"	Igneous		A&Wc			FBC			FC	AgL	AgL
SP	Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/109°54'41"			A&Wc			FBC			FC		AgL
SP	Turkey Creek	Headwaters to confluence with Rock Creek			A&Wc			FBC			FC	AgL	AgL
SP	Turkey Creek	Below confluence with Rock Creek to terminus near Willcox Playa			A&Ww			FBC			FC	AgL	AgL
SP	Ward Canyon	Headwaters to confluence with Turkey Creek			A&Wc			FBC			FC		AgL
SP	Willcox Playa	From 32°08'19"/109°50'59" in the Sulphur Springs Valley	Sedimentary		A&Ww			FBC			FC		AgL

**Adding Drinking Water Use for Bonita Creek in Appendix B**

During the rulemaking process, ADEQ received information that Bonita Creek, an indirect tributary to the East Verde River, is used as the source of water for the Bonita Creek Water Company. Pursuant to this information, ADEQ is adding a Domestic Water Source (DWS) use to this water.

**The Surface Water Protection Program – Article 2**

This portion of the preamble outlines the adoption of the Arizona Surface Water Protection Program (SWPP).

### *Economic, Social and Environmental Cost-Benefit Analysis*

Outside of the process deployed to determine the extent of federal jurisdiction under the currently effective WOTUS rule, the most overarching analysis ADEQ has performed in this rulemaking is the economic, social, and environmental cost/benefit analysis required for SWPP implementation. A.R.S. §49-221 requires that the Director adopt “procedures for determining economic, social and environmental costs and benefits.” The procedure for determining the economic, social and environmental costs and benefits of the new SWPP program will be applied in two ways:

1. If the water is not categorically excluded from the SWPP as defined in § 49-221 and the economic, social and environmental benefits of adding the water outweigh the economic, environmental and social costs of excluding the water from the list, the water *may* be added to the PSWL.
2. In adopting water quality standards at a particular level or for a particular water category for non-WOTUS protected surface waters.

This rulemaking addresses both statutory requirements and includes a regulatory procedure for conducting this crucial analysis in R18-11-213. This rulemaking includes water quality standards for non-WOTUS protected surface waters that have been adopted at a particular level for waters that will be protected by the SWPP. As mentioned in the background section of this preamble, the definition of water quality standard is wide-ranging and encompasses every rule adopted in this article. This rulemaking also adds waters to the PSWL where ADEQ has demonstrated that the benefit of adding that water to the list outweighs the cost.

Although the requirements specific to the SWPP were introduced in HB2691 (2021), ADEQ has performed cost/benefit analyses in a number of historical contexts. A.R.S. § 41-1055 has required a formalized Economic Impact Statement for agency rulemakings since 1995. As these analyses require specialized economic knowledge, the agency has frequently relied on outside expertise to perform baseline economic reports that inform our policy decisions. To conduct the wide-ranging economic analysis required by the SWPP and § 41-1055, ADEQ contracted with McClure Consulting, LLC (McClure) to produce two separate reports to inform the procedure adopted in R18-11-213 and the economic analysis deployed by ADEQ in this rulemaking. The first report was delivered on July 7, 2021, and a second report was delivered on April 29, 2022. This preamble

and the accompanying technical paper available at <http://azdeq.gov/node/8173> source extensively from those two reports.

The first report drafted by McClure focused generally on the process ADEQ could use to model economic, social and environmental costs and benefits. The second report provides deeper analysis and delves into specific case studies that ADEQ has used to display how the procedures adopted in the rulemaking will be applied. In addition to the reports produced by McClure, ADEQ conducted a 50-state survey to provide an overview of how other states conduct similar analyses. That 50-state report is also available for stakeholder review on ADEQ's website at <http://azdeq.gov/node/8173>.

### McClure Report #1

For the first report, ADEQ asked McClure to produce recommendations for a model-based approach to demonstrate how the procedures adopted in the SWPP rulemaking might work. ADEQ is familiar with modeling in several environmental contexts, so pursuing a model-based approach is a logical outgrowth of institutional expertise within the agency. ADEQ can provide accurate costs of our own regulatory programs through known and quantifiable internal costs. Additionally, ADEQ can estimate costs to permittees through our historic economic impact statements associated with rulemaking. However, for environmental benefits, there are no easily ascertainable market prices as the benefits often relate to "goods and services" that are not traded in markets and therefore are not subject to market-based pricing.

Since there is a need for the economic value of these non-market environmental resources to be expressed in market prices for the purposes of the SWPP rulemaking, ADEQ's consultants provided a literature review for valuing non-market goods and worked with agency staff to evaluate how they could be used to build the statutorily required analysis. Then, McClure built a draft framework for an economic model to display how they would estimate the market value of those resources. The initial report presented the agency with a number of different techniques and research the consultant relied on to build the required procedure.

### Modeling Elements and the Benefit Transfer Approach

ADEQ recommends interested stakeholders read the consultant's report for more in-depth information, but this section provides a summary of their work. In their first report, McClure Consulting proposed various valuation

methods that all came with their own unique practical and scientific challenges. For example, one such suggestion was using a survey-based methodology. A survey-based methodology would have required ADEQ to use a survey process to derive hypothetical costs and benefits by surveying individuals and businesses who used potentially protected waters. Then, ADEQ would use that input to derive some sort of market cost or price for the protection the SWPP rules would provide.

While the idea of a survey-based methodology seemed viable, the kind of information ADEQ would need to gather from a survey process would require the agency to do an additional level of analysis beyond the scope of the SWPP rulemaking. Although HB2691 prescribed an analysis, the SWPP enabling legislation allowed ADEQ to develop the most reasonable form for that analysis. Given these real-world challenges of developing a valuation procedure, the consultant recommended ADEQ leverage the concept of benefit transfer as a valuation methodology. This approach had substantial appeal to ADEQ as it seemed to be the most reasonable way to conduct the sweeping analyses required to adopt the SWPP within the timeline required by the statute.

The benefit transfer method is a tool that is used to estimate economic values for environmental costs and benefits by transferring available information from studies already completed in another location and/or context. For example, values for recreational fishing in a particular state may be estimated by applying measures of recreational fishing values from a study conducted in another state. Thus, the basic goal of benefit transfer is to estimate benefits for one context by adapting an estimate of benefits from some other context. ADEQ's consultants informed the agency that benefit transfer is often used when it is too expensive and/or there is too little time available to conduct an original valuation study, yet some measure of cost or benefits is needed. It is important to note that benefit transfers can only be as accurate as the initial study. However, this approach comes with challenges of its own, including finding case studies that align with the local policy under consideration.

Based on the consultant's recommendation in the first report, ADEQ expressed interest in using the benefit transfer approach during the deployment of our SWPP program. This approach also gave ADEQ a way to explicitly incorporate opportunities for stakeholder input to supplement and validate the values generated by the model. ADEQ's consultants conducted an extensive search for studies that would be relevant for this approach. Those studies are listed in the consultant's paper and reproduced in the section of this preamble that requires ADEQ to disclose the studies the agency relied on during the rulemaking action.

The next step was to construct a list of inputs that would be relevant in the final model. ADEQ once again relied heavily on the consultant's recommendations, and the first suggestions were wide-ranging and included everything from administrative to scientific influences. The modeling elements proposed by the contractor are discussed at length in the first report and modified heavily in the final report which is addressed later in this preamble. ADEQ has not reproduced the elements suggested in the first report because they were modified in the second report. The appendix list of the first report is annotated with questions and commentary intended to help guide the benefit/cost modeling process for stakeholders who are interested in the evolution of agency thinking.

The initial framework in the first report also did not focus on applying the model in specific situations or for "certain category of waters," although one high-level process did entertain the idea of setting individual pollutant parameters for designated uses. After publication ADEQ and the McClure began work on scoping the second leg of our review to narrow that framework and apply it in the specific contexts.

### McClure Report #2

The process of developing the first McClure report highlighted areas that needed further analysis. Simply put, ADEQ determined that the process of assigning "costs" or "value" in a vacuum was untenable for the purposes of SWPP adoption. Surface waters in Arizona have unique characteristics that require a valuation approach that considers those local characteristics. The SWPP enabling legislation contemplated this and contains the requirement that ADEQ consider "the unique characteristics of [Arizona's] surface waters." With this in mind, ADEQ entered into an additional contract with McClure to hone the analysis to meet that specific requirement of the statute. ADEQ received the first draft report on March 2, 2022 and provided input to McClure. The final report and model were delivered on April 29, 2022 and is posted at <http://azdeq.gov/node/8173> on the Stakeholder Meetings and Materials link.

### Example Water Analysis

The first McClure report contains a section that explains the limitations of the recommended benefits transfer approach. The largest limitation on the recommended approach was simply that it wasn't geared towards any particular real-world scenario. Adjusting water quality standards and applying them to water bodies in a hypothetical situation simply does not work. To develop a methodology, ADEQ needed to first develop a

framework for analysis. ADEQ and our consultants prepared three categories of “example waters” to meet the requirement that standards be adopted for a “particular water category” and then be considered to potentially be added to the PSWL. ADEQ developed three categories of waters as a framework for the SWPP cost/benefit analysis:

Class 1 – Sky Island Streams. Representative Water – Stronghold Canyon East. Waterbody ID: AZ15050201-299

Sky Islands are isolated mountain ranges in southeastern Arizona. Some of the mountains rise more than 9,000 feet above the surrounding desert floor making the lowlands and high peaks drastically different. These mountains contain a number of potentially perennial or intermittent surface waters that may have no significant nexus to a traditionally navigable water as the water generally infiltrates or evaporates in the deserts surrounding the sky island. In the mountains, these streams provide valuable habitat, recreational opportunities, and some may hold a level of cultural significance.

ADEQ has picked Stronghold Canyon as an example for this category of waters. The Cochise Stronghold is located in southeast Arizona within the Dragoon Mountains at an elevation of approximately 5,000 ft. This woodland area lies in a protective rampart of granite domes and sheer cliffs which were once the refuge of the Apache Chief Cochise and his people. Perennial springs feeding streams in this area provide water to animals and historically to the people that lived in the area. Now located within the Coronado National Forest, the area remains a popular recreation destination with opportunities for hiking, birding, climbing, mountain biking and camping.

Class 2 – Isolated Lakes. Representative Water – Pintail Lake, Show Low. Waterbody ID: AZ15020005-5000

Pintail Lake is a man-made lake and wetland created from treated water from the City of Show Low. Developed in 1979, it is recognized nationally as one of the first of its kind in the country. Water covers approximately 50 to 100 acres at any given time due to seasonal or climate variations. The lake is an important source of water for local and migrating wildlife, including a variety of birds and big game such as elk and pronghorn antelope. Hunting is allowed in the area and Pintail Lake is popular with waterfowl hunters between November and January. The area is managed in partnership with the City of Show Low, Arizona Game and Fish Department, Apache-Sitgreaves National Forest, and other parties, including the White Mountain Audubon Society.

Class 3 – Ecologically, Culturally, or Historically significant water. Representative Water – Quitobaquito Pond.

Quitobaquito pond is located in the Organ Pipe Cactus National Monument, which was created in 1937 by President Franklin Roosevelt. Historically, the spring-fed pond was located on a prehistoric trade route known as the Old Salt Trail. This route was used to trade salt, obsidian, seashells, and other commodities from the salt beds of Sonora, Mexico. The pond remains culturally significant to the Tohono O’odham Nation located in southern Arizona. From the 1860s and until the area was designated a national monument, the water was used by the settlers for their homes and businesses and to irrigate fruit trees and crops. The pond is home to a species of turtle and snail unique to the pond, as well as a butterfly that coexists solely with a plant found only in this area.

***ADEQ’s Final Model:***

After developing the categories of waters for analysis, ADEQ’s consultants began the work to build the final model. The valuation framework used by the contractor includes national and state-level costs as well as estimates for benefits, along with a proposed framework for evaluating benefits at smaller levels of geography. The resulting ADEQ cost/benefit model was adapted by the Consultants to address the types of policy actions that are most likely to occur in Arizona. These adaptations took into account the unique nature of Arizona’s surface waters that are described in more detail in the consultant’s final report.

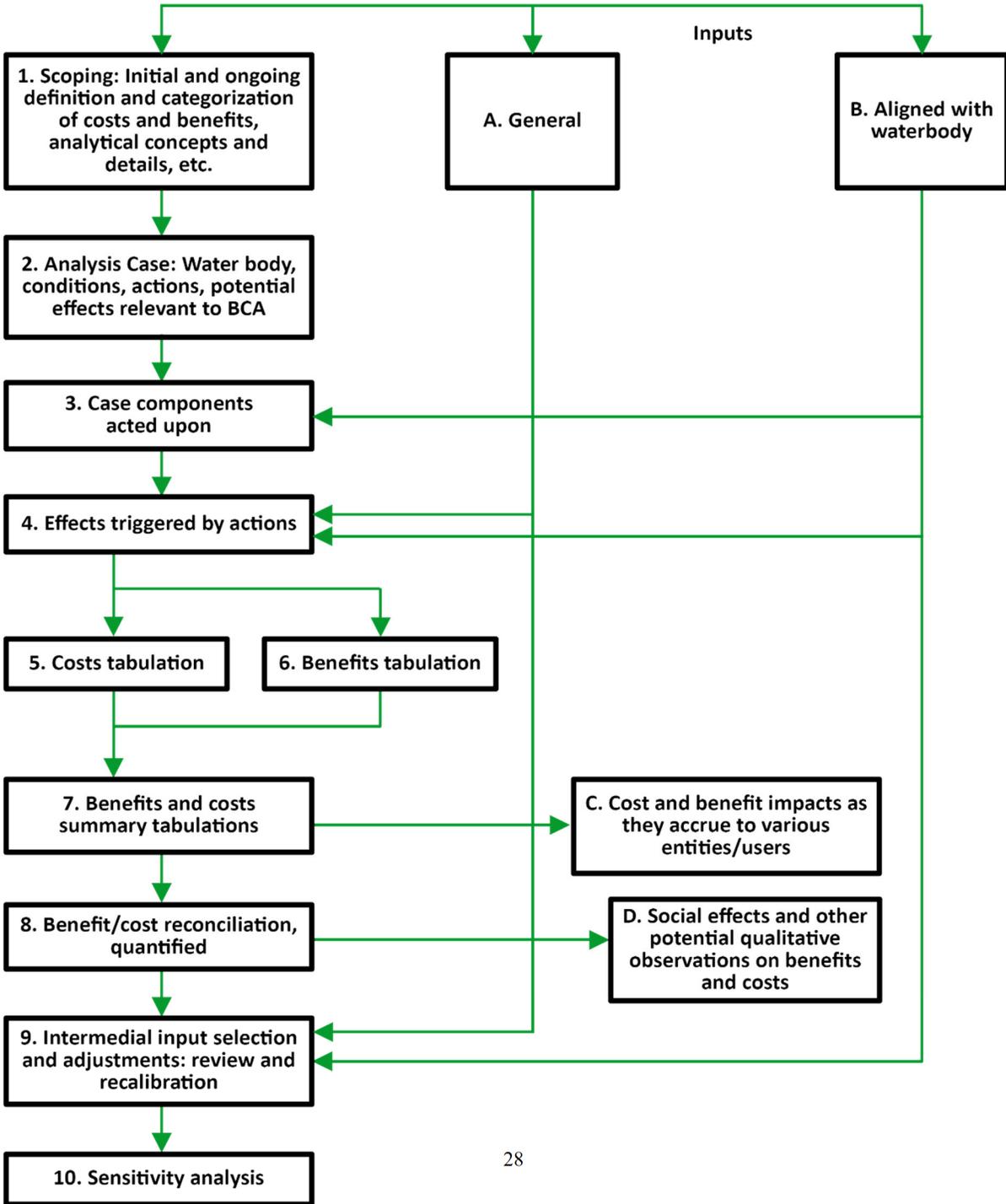
The currently effective CWA program deployed in Arizona works. The water quality standards that ADEQ has adopted as part of that program protect the important uses of Arizona’s surface waters without creating undue burdens for those who need an AZPDES permit. The contractor's framework models the adopted SWPP program allows ADEQ to demonstrate the costs/benefits of adopting a state-level program that has similar standards to those in our federal program. ADEQ’s consultants used portions of that model but used Arizona specific variables to come to their final result.

The importance of using an ESE analysis framework similar to that of the CWA is because the standards in the SWPP borrow significantly from those adopted to protect waters under the CWA program. This is especially true for the numeric standards adopted by ADEQ in this rulemaking. As mentioned elsewhere in this preamble,

ADEQ spends a significant amount of time reviewing the science behind setting numeric standards for protected surface waters. The amount of science that has been done to establish the formulas ADEQ uses to set those standards simply is not replicable by ADEQ in the timeframe available for this rulemaking.

Additionally, the numeric standards that are set by ADEQ for the Federal portion of the program already include Arizona specific information where appropriate. ADEQ uses Arizona specific species lists when setting numeric criteria for aquatic and wildlife uses. In the 2019 TR, ADEQ attempted to use Arizona specific body weight and consumption rates for human health and safety uses.

Thus, the consultants final model implements that unique process into a unified model, where costs/benefits are assessed through an already adopted level of water quality standards to categories of waters that represent those most likely to be protected by the SWPP. The figure below is another conceptual flow chart that ADEQ has included in this preamble to illustrate the inputs the consultants used to model the cost/benefits of the new SWPP program. Key components of the model are also described below (letters and numbers match the diagram labeling and are therefore not necessarily sequential).



## Explanation of Inputs.

### Item A. Inputs, general:

1. Standards by water type, if/as applicable to current or future modeling efforts, and relationships to uses, etc.
2. Per-user dollar values tied to specific water use types, such as specific recreation activities, etc.
3. Cost factors: permitting or other compliance for public and private entities; ADEQ administrative costs based on categories shown in Appendix D, estimated by ADEQ staff for each of the three case studies classes, for use in the BCA model; possible user charges per unit by type; and consideration of other factors such as health impacts (as burden), as applicable or practical at this level of analysis (current or future). Factors may be directly quantifiable in economic terms, and/or indirectly quantifiable in economic terms or as social effects (as relevant).
4. Benefit categories:
  - a. Directly quantifiable economic benefits, as willingness to pay (“WTP”) dollar values on a per-household, per-acre basis.
  - b. Benefits applicable, as dollars on some unit basis, to participants in specific activities, recreational or other.
  - c. Benefits indirectly quantifiable in economic terms, or identifiable and addressed on qualitative terms only, including economic and social effects (as relevant).
5. Discount rates to apply to future costs and the stream of annual benefits both local and non-local households would experience.

### **Item B. Inputs, aligned with WTP categorical distinctions:**

1. Distinctions include: forested, non-forested, and possible other categories, and other conditions specific to the waterbody.
2. Cost factors: any variation from general factors based on specifics of waterbody; opportunity costs.
3. Selection of local and non-local affected households, as described in relation to Figure 1 Scoping.

### **Item 9. Recalibration, as appropriate:**

1. Maintaining “adding up” integrity in the course of producing benefit and cost estimates related to any single waterbody. This is accomplished primarily by examining estimates for individual waterbodies in

comparison with Arizona-wide estimated annualized totals for costs and WTP benefits, which would be initially informed by EPA documentation of estimated state-level costs and benefits.

**Item 10. Sensitivity analysis component:**

1. Reviewing how the overall model structure relates to the specific analysis conditions in ways that could tend to over- or underestimate costs and/or benefits.
2. Considering whether and to what extent results of a BCA could be unduly skewed or otherwise unusually sensitive, based on some modeling input or some particular characteristic of the waterbody being analyzed. This would be addressed initially by reviewing: 1) market area designations, 2) identified cost and benefit categories, and 3) cost and benefit factors applied to the estimating model. If warranted by the review, inputs and factors may then be modified, modified model results examined for effects of the sensitivity testing, and modeling components adjusted if necessary, along with accompanying notations.

**Item C. Affected entities:**

1. For benefits: geographic and demographic general description of affected households that are both “local” and “non-local” with respect to waterbody.
2. For costs: types of entities affected, with costs allocated among them to extent possible.

**Item D. Social effects:**

1. Documenting Environmental Justice conditions. Data on disadvantaged minority populations within local and non-local market areas are compiled as part of the documentation of demographic conditions within these areas, which at a minimum, for all populations, includes number of households and household incomes as well as racial/ethnic designations by geographic sub-area.
2. Categories that may be quantified in the future, but in the interim addressed qualitatively as discussed in the following section.

Modeling Results

ADEQ recommends that stakeholders review the final contractor report for a full discussion of the cost/benefit modeling analysis, but quantitative aspects are summarized in the tables below.

Cost and Benefit Factors	Class 1 - sky island stream - Cochise Stonghold Cyn.	Class 2 - isolated lake - Pintail Lake & marshes	Class 3 - unique waterbody - Quitobaquito Pond
Size (acres or acre-equivalents (Class 1))	21.76	65.00	0.50
Forested?	Yes	Yes	No
<b>Costs and benefits over a 20-yr. period, discounted</b>			
<b>Costs</b>			
404 permits	\$9,344	\$9,344	\$9,344
Mitigation			
ADEQ Admin	\$62,641	\$111,067	\$74,938
<b>Total</b>	<b>\$71,985</b>	<b>\$120,411</b>	<b>\$84,282</b>
<b>Benefits, from willingness-to-pay (WTP) factors</b>			
Local	\$5,509,181	\$7,840,675	\$3,151
Non-local	\$8,635,112	\$54,780,036	\$4,066
<b>Total</b>	<b>\$14,144,293</b>	<b>\$62,620,711</b>	<b>\$7,216</b>
Arizona component	\$14,982,646	\$68,136,424	\$8,045
<b>Benefit/cost comparison</b>			
Total benefits, Arizona	\$14,982,646	\$68,136,424	\$8,045
Total costs	\$71,985	\$120,411	\$84,282
Benefits/costs (first number in ratio: __ to 1)	208.1	565.9	0.10

Of the three case-study classes, class 1 and class 2 both had benefit/cost ratios well in excess of 1. Class 3 had the opposite condition – a very low cost/benefit ratio of 0.1. A meaningful issue, however, is that the willingness to pay approach to estimate benefits does not encompass a way of capturing the value for the vital role of the Quitobaquito Pond in protecting rare and endangered species. The low cost/benefit ratio of protecting Quitobaquito Pond led to ADEQ excluding this class of water bodies from potential inclusion in the SWPP.

Based on the modeling efforts provided by the contractors, this rulemaking proposes to protect class 1 and class 2 waters with water quality standards that are similar to those applied to the federal program. The modeling effort has demonstrated a significant benefit for protecting these surface waters, especially when considering the context that there are no current discharge permits to any of the surface waters protected by the SWPP. If, in the

future, ADEQ proposes to protect a water with a discharge permit, the agency expects that the costs considered by the analysis would dramatically change.

### *Arizona SWPP Water Quality Standards, Generally*

ADEQ's ESE model showed that the benefits of protecting certain classes of waters with water quality standards similar to those adopted for Arizona's CWA program outweighed the costs. However, the SWPP enabling legislation restricts the water quality standards that ADEQ can adopt and the permitting provisions that can be applied to discharges to non-WOTUS protected surface waters. This is best summarized in how the legislation redefined the word "permit." A.R.S. §49-201(32) defines the word permit as follows: "[f]or the purposes of regulating non-WOTUS protected surface waters, [a] *permit shall not include provisions governing the construction, operation, or modification of a facility except as necessary for the purpose of ensuring that discharge meets water quality-related effluent limitation or to require best management practices for the purpose of ensuring that a discharge does not cause an exceedance of an applicable surface water quality standard.*"

The restrictions present in the legislation mean the SWPP will regulate discharges to waters primarily based on water quality-based effluent limitations (WQBELs). WQBELs regulate discharges based upon the *actual impact* that a discharge has on receiving waters. The water quality standards established for a particular waterbody serve as the basis for imposing water-quality-based treatment controls in AZPDES permits.

### The Difference between CWA and SWPP Standards, Generally

To reiterate an earlier portion of this preamble, water quality standards are laws or regulations that consist of:

1. The designated use or uses of a waterbody;
2. The water quality criteria that are necessary to protect the use or uses; and
3. An antidegradation policy.

The SWPP borrows significantly from the Federal CWA structure with a few crucial distinctions. ADEQ *may not* adopt or apply water quality standards for non-WOTUS protected surface waters based on:

1. Antidegradation
2. Antidegradation Criteria
3. Outstanding Arizona Waters

Because antidegradation standards and criteria are prohibited from being used in AZPDES permits for discharges to non-WOTUS protected surface waters, the rules that ADEQ is adopting in Title 18, Chapter 11, Article 2 do not include those types of water quality standards. Additionally, permits and conditions for discharges to non-WOTUS protected surface waters are prohibited from implementing any sections of the CWA directly, including sections 301, 302, 306, 307, 308, 312, 318, and 405. Permits issued for these discharges to non-WOTUS waters are not subject to review by the EPA. ADEQ is prohibited from adopting or applying rules regarding the following discharges to non-WOTUS protected surface waters:

1. Except as applied to discharges from publicly owned treatment works, requirements specific to new sources or new dischargers under the CWA.
2. Except for discharges from publicly owned treatment works, technology-based effluent limitations, standards, or controls, including new source performance standards, under sections 301(b), 304(b), and 306 of the CWA.
3. Requirements to express all permit limitations, standards, or prohibitions for a metal solely in terms of total recoverable metal.
4. Requirements for review and approval of permits by the USEPA before issuance.

#### ***SWPP Definitions – R18-2-201***

Regulatory definitions provide clarity and certainty to the public when they engage with ADEQ's regulations. This rulemaking adopts 30 discrete definitions for terms that appear in Article 2. Generally, ADEQ has included specific definitions for designated uses, flow conditions, categories of surface waters, and terms that are defined in the enabling legislation that are implemented for user convenience.

ADEQ has determined some definitions were necessary during the rulemaking process due to stakeholder feedback. The definitions in Article 2 do not deviate significantly from the comparable definitions adopted in the federal program.

### ***SWPP Applicability – R18-2-202***

The SWPP enabling legislation prescribes limitations on what types of waters the program ADEQ can protect under this program. ADEQ has drafted R18-2-202 to make the types of waters that the SWPP applies to abundantly clear.

### ***SWPP Designated Uses – R18-2-203***

Adopting designated uses for a surface water allows ADEQ to provide a fundamental articulation of its role in Arizona's aquatic or human environment to the public. These adopted uses express goals for the water, such as supporting aquatic life and human activities. The concept of protected surface waters having designated uses is central to establishing appropriate water quality standards and setting those standards at an appropriate level.

Pursuant to the information produced by our economic, social, and environmental cost/benefit analysis, ADEQ is endeavoring to keep as many of the aspects of the new SWPP as similar as possible to the traditional AZPDES program that has already been deployed in Arizona. As a result, this rulemaking includes eight designated uses that are similar to the 10 uses that Arizona has developed for the CWA program. Notably, the SWPP does not apply to ephemeral waterways, therefore, ADEQ will not adopt an aquatic and wildlife (ephemeral) use for the SWPP. ADEQ has determined at this time that there are no EDWs eligible for protection under the SWPP, therefore, ADEQ is not currently adopting EDW standards for non-WOTUS protected surface waters. Standards that cannot be applied to waters only create costs and provide no benefits. Arizona's non-WOTUS protected surface waters list will use the following designated uses:

1. Domestic water source AZ (DWSAZ),
2. Fish consumption AZ (FCAZ),
3. Full body contact recreation AZ (FBCAZ),
4. Partial body contact recreation AZ (PBCAZ),
5. Aquatic and wildlife (cold water) AZ (A&WcAZ) (acute and chronic),
6. Aquatic and wildlife (warm water) AZ (A&WwAZ) (acute and chronic),
7. Agricultural irrigation AZ (AgIAZ), and
8. Agricultural livestock watering AZ (AgLAZ).

Future rulemakings for non-WOTUS protected surface waters may add or revise these designated uses. The two

subcategories of aquatic and wildlife designated uses adopted in the SWPP are meant to protect fish, shellfish, plants, and wildlife. In this initial version of the rulemaking, the A&WcAZ and A&WwAZ are assigned based on the relative elevation of the water, as well as the flow regime of the water. Intermittent and perennial protected surface waters located above 5000' are assigned the A&Wc use and those below 5000' are assigned the A&Ww use. These designations comport with the longstanding science the agency has used to assign the similar uses in the Federal program.

The SWPP will ensure that non-WOTUS protected surface waters will maintain water quality for recreation in and on the water with the full-body contact recreation (FBCAZ) and partial body contact recreation (PBCAZ) designated uses. These designated uses are intended to maintain and protect water quality for swimming, boating, wading, fishing, and other recreational uses. The FCAZ designated use is intended to protect human health when fish or other aquatic organisms are taken from a surface water for human consumption. ADEQ has considered the use and value of surface waters for public water supply by establishing the domestic water source (DWSAZ) designated use. The DWS designated use applies to a surface water that is used as a raw water source for drinking water supply. Grant Creek, Pinery Creek, and Mormon Lake have all traditionally been protected for this use in Article 1.

A.R.S. § 49-221(G)(3)(a) specifically contemplates protecting non-WOTUS surface waters “that are public waters used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water.” A.R.S. § 49-221(G)(3)(b) specifically protects “perennial waters or intermittent waters of the state that are used as a drinking water source, including ditches and canals.” A.R.S. § 49-221(G)(3)(d) specifically protects “perennial or intermittent public waters used for recreational or commercial fish consumption” and A.R.S. § 49-221(G)(3)(e) specifically protects “perennial or intermittent public waters used for water-based recreation such as swimming, wading, boating and other types of recreation in and around the water. The adoption of the DWSAZ, FBCAZ, PBCAZ, FCAZ, A&WcAZ, and A&WwAZ ensure that the specific goals of the statute are met.

Finally, ADEQ recognizes the use and value of surface waters for agricultural purposes by establishing the agricultural irrigation (AgIAZ) and agricultural livestock watering (AgLAZ) designated uses. These uses are intended to maintain and protect surface water quality so water can be used for crop irrigation or to water cattle and other livestock.

#### ***SWPP Interim, Presumptive Designated Uses – R18-2-204***

ADEQ has endeavored to build a set of regulations that could be used if the definition of WOTUS changes again in the near future. In our federal program, the tributary rule is used to assign standards to surface waters that are discovered to be WOTUS but haven't had designated uses assigned in Appendix B. One of the major limitations towards establishing a lever like the tributary rule is that the SWPP enabling legislation explicitly states that for a water to be protected, it must be listed on the PSWL.

The only time this is not the case is when the director discovers an imminent or substantial threat to public health or the environment that may occur if a surface water isn't listed. In the unlikely event that this happens, ADEQ is proposing the interim, presumptive designated uses rule in Article 2. The intention of this rule is that if the Director discovers an imminent or substantial threat to public health or the environment may occur, then the Director could list a water on the PSWL through the process prescribed in statute and use this rule to assign the proper designated uses outlined in this rule.

#### ***SWPP Analytical Methods – R18-2-205***

ADEQ has adopted a similar rule to our federal program to ensure that our sampling methodology remains consistent across both state and federal waters. The analytical methods rule ensures that samples collected by ADEQ are analyzed by qualified individuals at qualified locations that have the equipment necessary to produce scientifically verifiable results. This rule ensures that decisions made on non-WOTUS protected surface waters are made with the same level of scientific accuracy and credibility as decisions in the Federal program.

#### ***SWPP Mixing Zones – R18-2-206***

Occasionally, due to design and economic constraints, permit holders for discharges to non-WOTUS protected surface waters may need to discharge certain pollutants at concentrations that exceed SWQS. ADEQ has added mixing zone provisions to the SWPP to allow dischargers greater flexibility in permitting conditions while still protecting the environment.

A mixing zone is a limited area or volume of water where dilution of a discharge takes place and where numeric water quality criteria may be exceeded in a receiving surface water. The boundary of a mixing zone is the point

where the discharged pollutant is completely mixed. The goal of a mixing zone is to ensure that pollutant discharges are mixed so as to prevent acute toxicity and lethality to organisms passing through the mixing zone, and to protect the biological, chemical, and physical integrity of a surface water as a whole.

To ensure the prevention of acute toxicity, the requester of a mixing zone will generally propose a mixing zone boundary based on the following steps:

1. Identify the critical flow conditions of the receiving water and discharge, in order to predict the worst-case mixing scenario of the pollutants in the mixing zone.
2. Identify conservative pollutant concentration inputs.
3. Model the mixing of the discharged pollutants based on the critical flow conditions and concentration assumptions.
4. The model run will produce an acceptable mixing zone size. The model will account for whether a mixing zone should or should not be allowed.

Modeling for mixing zone size may be performed, as appropriate, by simple calculation. Ultimately, the factors in determining whether acute toxicity is prevented are (1) duration of exposure, and (2) pollutant concentration. While it is a goal to ensure that mixing zones are not larger than necessary, the size of the mixing zone is not as important as toxicity. The mixing zone standards and requirements in this rulemaking ensure protection of all water quality standards and also are flexible enough for practicable and scientifically defensible implementation.

This rulemaking includes a definition of critical flow conditions. Mixing zone size and boundaries are based on calculations and modeling to account for critical flow conditions. Assigning critical flow conditions for discharge and receiving water flows will allow for sizing of mixing zones based on exposure risk and exceedance frequencies and the particular designated use and criteria.

#### ***SWPP Natural Background – R18-2-207***

ADEQ has implemented a natural background rule in the SWPP rulemaking. The natural background rule allows ADEQ to consider whether the concentration of the pollutant is caused solely by natural background if a violation of water quality standards occurs.

### ***SWPP Schedules of Compliance – R18-2-208***

R18-2-208 allows ADEQ to work with permittees to develop an enforceable schedule in order to allow them time to come back into compliance with their AZPDES permit.

### ***SWPP Variances – R18-2-209***

A water quality variance is a time limited exception to an existing water quality criterion. A temporary water quality criterion for a designated use is identified which maintains the highest attainable condition of that water. The highest attainable condition of the water essentially means that the receiving water quality aligns as much as possible with a designated use and is the best water quality that can be achieved during the term of a variance.

A variance is time-limited, discharger or water body-specific, and pollutant-specific. A variance does not result in any change to the underlying designated use and criteria of the receiving water. This means that any discharger to which a variance does not apply must still comply with the applicable designated use and criteria of the water.

Variances are a vital tool to improving water quality in partnership with facilities and ADEQ has had some form of a rule allowing for variances in the federal program since 1996. The variance rule aligns with the federal version of the rule and EPA guidance as no EPA rule previously existed to prescribe and define variance requirements.

Under the rule, variances are tied to a specific discharger/facility or water body segment. For example, if a discharger is granted a variance, the variance will be adopted as a rule, and that rule will be referred to as a basis for a permit condition in that discharger's permit in the next permit renewal or modification. Note that if a variance is repealed, which may occur for some reason that necessitates immediate action, ADEQ would have the authority under the standard reopener clause to modify the permit condition.

ADEQ had adopted the requirements that a variance must protect the "highest attainable condition" of the water body to which a variance applies. "Highest attainable condition" will be defined in a similar way as it is with

the federal program, specifically that:

1. The condition does not have to be expressed as a use, but rather as a quantifiable expression of the condition;
2. The condition cannot lower currently attaining water quality in that the condition does not change the designated use underlying a variance.

Thus, the highest attainable use is a modified aquatic life, wildlife, or recreational use, while the highest attainable condition is an expression of pollutant reduction. Because the “highest attainable condition” must be met at any time throughout a variance term, variance requirements may need to be expressed as a range, and dependent on particular parameters, to account for change over time, or multiple variances may be adopted to allow for incremental change in water quality. The rule allows variances to be issued for longer than five years, but for no longer than is necessary to achieve the highest attainable condition.

#### ***SWPP Site-specific Standards – R18-2-210***

ADEQ is proposing to adopt a rule that is similar to the federal version of this rule in order to allow the agency to set site-specific standards for listed waters.

#### ***Enforcement of Non-Permitted Discharges for Non-WOTUS Waters – R18-2-211***

The rule prescribes the minimum data collection requirements for identifying a violation of a standard for enforcement purposes. To be clear, this rule does not apply to exceedances of a permit. ADEQ has included the language that a “non-permitted discharge violation” does not include a discharge regulated under an AZPDES permit. Therefore, this enforcement rule will not be applied in situations where there is a permitted discharge.

What this rule does provide is a mechanism to determine the need for enforcement of suspected unpermitted discharges to non-WOTUS protected surface waters and ensuing violations of water quality standards. ADEQ believes the language in the rule clarifies that it only applies to non-permitted discharge violations.

Although the rule does prescribe the minimum data collection requirements, these requirements are for enforcement purposes only in the situation where a discharge is not permitted. However, because this rule is

located in the standards rules, it may be unclear that this rule is not intended to be used for “assessment” purposes. An “assessment” is a required action whereby, every 5 years, ADEQ assesses whether each water or segment of a non-WOTUS protected surface water is meeting the water quality standards that have been set for it.

For assessment and impaired water identification purposes, ADEQ wishes to clarify that the agency must use the relevant standard rule and associated calculation method pursuant to A.A.C. Chapter 11, Article 2 for each pollutant/use, and use the credible data and data interpretation requirements and methodologies in the Impaired Waters Identification rules in A.A.C. Chapter 11, Article 6 to determine whether each water is attaining applicable standards or not. The impaired water identification rules in that article currently apply to non-WOTUS protected surface waters, although ADEQ has a duty to modify those rules within a year of publishing this rulemaking.

***SWPP Statements of Intent – R18-2-212***

Because the SWPP enabling legislation contains a significant number of limitations regarding the reach of ADEQ’s potential regulations, ADEQ has included a rule to specifically suggest the intent of the agency during rulemaking.

***SWPP Narrative Standards – R18-2-214***

Narrative criteria are general statements designed to protect the aesthetics and health of a waterway. ADEQ is proposing to adopt a majority of the existing narrative criteria to prevent the discharge of pollutants that cause any conditions listed in R18-2-214.

Water quality criteria, numeric criteria, and narrative criteria are all based on a significant body of scientific work. Generally, standards are developed using a workgroup process or informal public meetings and are eventually proposed for public comment. This rule does not include narrative-numeric criteria for bottom deposits, biocriteria, or nutrient standards for lakes. The rules in R18-11-108.03 have not been approved by the EPA, so their inclusion was not part of the ESE analysis that ADEQ performed. There are no waters on this first draft of the PSWL that are perennial, wadable streams so standards that are similar to R18-11-108.01 and R18-11-108.02 would not apply to any listed waters.

### ***SWPP Numeric Standards – R18-2-215***

R18-2-215 lists the numeric water quality standards applicable to non-WOTUS protected surface waters. The numeric water quality criteria have been adopted at the same level as those in our federal program.

When calculating water quality standards for human health, the State uses base equation factors found in EPA human health criteria methodology documentation, and then modifies the formulas to reflect the different uses assigned to Arizona waters.

Arizona's human health standards are broken down into domestic water source AZ (DWS AZ), fish consumption AZ (FC AZ), full body contact AZ (FBC AZ) and partial body contact AZ (PBC AZ). The first three standards (DWSAZ, FCAZ, FBCAZ) are further divided and calculated using carcinogenic and non-carcinogenic endpoints. Where the FBCAZ use assumes acute exposure to carcinogens through water consumption, the PBCAZ standard, due to the infrequent, short, and episodic nature of the exposure, assumes an acute dose and uses only the non-carcinogenic endpoint.

Aquatic and wildlife standards are derived using empirical toxicity data for Arizona species to calculate acute and chronic endpoints. For human health standards, data are mainly extrapolated from animal studies. Because of this, the reference dose (RfD) used to calculate a standard incorporates safety factors addressing aspects such as extrapolation of animal data and human weight, age, and sex differences. Also, because humans don't have constant and direct exposure to waterborne toxins, for non-carcinogenic pollutants, ADEQ uses relative source contribution factors (RSC) to account for exposures from other sources, such as food and occupational exposures. For fish consumption, ADEQ also considers the average bioaccumulation potential of a chemical in edible tissues of aquatic organisms that are commonly consumed by humans.

Carcinogenic standards are functionally statistical risk equations that take the potency of a carcinogen and calculate the concentration that would cause one additional cancer case per 1,000,000 people. One in a million is considered an "acceptable" risk when calculating standards. Every exposure carries exactly the same risk for developing cancer.

Unlike aquatic and wildlife standards, human health standards are not broken down into chronic and acute

concentrations. A more conservative approach is employed, which assumes acute lifetime exposure due to: a) the unknowns due to lack of empirical data, b) other uncontrolled exposures to toxins, c) the statistical nature of carcinogenic standards and d) the fact that standards are set for the human population as a whole.

For all of the aquatic and wildlife uses (A&W AZ) the State uses data contained in the US EPA CWA § 304(a) Aquatic Life Table for the individual pollutant in question. To tailor the standard to one of the four A&W uses, the State uses the EPA “Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria” (EPA, 2013). In this procedure, species that do not occur in a particular waterbody type (e.g. salmonids for the A&W warmwater use) are deleted from the data set to better reflect the taxonomy of species that occur in that waterbody type and their respective toxicity values in the criteria derivation process. ADEQ utilizes a state-specific species list to tailor the aquatic and wildlife uses as much as possible to calculate A&W standards for Arizona.

For standards for the Aquatic and Wildlife Coldwater use, ADEQ uses salmonids and other coldwater species. For Aquatic and Wildlife Warmwater, coldwater species like salmonids are usually not considered. For Aquatic and Wildlife Effluent Dependent, ADEQ uses warmwater species that generally occur in nutrient rich, lower oxygen environments.

#### ***The Protected Surface Waters List – R18-2-216***

One of the main features of the new Arizona SWPP is that it requires the Director of ADEQ to maintain and publish a Protected Surface Waters List (PSWL). The Final PSWL is the version of the list that will be codified in this rulemaking at R18-2-216. Pursuant to the requirements of HB2691, the PSWL does include:

1. Waters of the United States;
2. The Bill Williams River, from its confluence of the Big Sandy River and the Santa Maria River to its confluence with the Colorado River;
3. The Colorado River, from the Arizona-Utah border to the Arizona-Mexico border;
4. The Gila River, from the Arizona-New Mexico border to its confluence with the Colorado River;
5. The Little Colorado River, from the confluence of the East and West Forks of the Little Colorado River to its confluence with the Colorado River;

6. The Salt River, from the confluence of the Black River and White River to its confluence with the Gila River;
7. The San Pedro River, from the Arizona-Mexico Border to the confluence with the Gila River;
8. The Santa Cruz River, from its origins in the Canelo Hills of Southeastern Arizona to its confluence with the Gila River; and
9. The Verde River, from Sullivan Lake to its confluence with the Salt River.

The PSQL does not include non-WOTUS waters that are:

1. Canals in the Yuma project and ditches, canals, pipes, impoundments and other facilities that are operated by districts organized under Arizona Revised Statutes (A.R.S.) Title 48, Chapters 18, 19, 20, 21 and 22 and that are not used to directly deliver water for human consumption, except when added pursuant to A.R.S. § 49-221(G)(4) and in response to a written request from the owner and operator of the ditch or canal until the owner and operator withdraws its request.
2. Irrigated areas, including fields flooded for agricultural production.
3. Ornamental and urban ponds and lakes such as those owned by homeowners' associations and golf courses, except when added pursuant to an economic, environmental, and social cost-benefit analysis where the benefits of listing the water outweigh the costs and in response to a written request from the owner of the ornamental or urban pond or lake until the owner withdraws its request.
4. Swimming pools and other bodies of water that are regulated pursuant to A.R.S. § 49-104, subsection (B).
5. Livestock and wildlife water tanks and aquaculture tanks that are not constructed within a protected surface water.
6. Stormwater control features.
7. Groundwater recharge, water reuse and wastewater recycling structures, including underground storage facilities and groundwater savings facilities permitted under A.R.S. Title 45, Chapter 3.1 and detention and infiltration basins, except when added pursuant to A.R.S. §49-221(G)(4) and in response to a written request from the owner of the groundwater recharge, water reuse or wastewater recycling structure until the owner withdraws its request.
8. Water-filled depressions created as part of mining or construction activities or pits excavated to obtain fill, sand or gravel.

9. All water treatment systems components, including constructed wetlands, lagoons and treatment ponds, such as settling or cooling ponds, designed to either convey or retain, concentrate, settle, reduce or remove pollutants, either actively or passively, from wastewater before discharge to eliminate discharge.
10. Groundwater.
11. Ephemeral waters
12. Lakes and ponds owned and managed by the United States Department of Defense and other surface waters located on and that do not leave United States Department of Defense property, except when added pursuant to paragraph 4 of this subsection and in response to a written request from the United States Department of Defense until it withdraws its request.

The PSWL also includes non-WOTUS surface waters that fall into the following categories:

1. All lakes, ponds, and reservoirs that are public waters used as a drinking water source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water;
2. Perennial waters or intermittent waters of the state that are used as a drinking water source, including ditches and canals;
3. Perennial or intermittent tributaries to the Bill Williams River, the Colorado River, the Gila River, the Little Colorado River, the Salt River, the San Pedro River, the Santa Cruz River and the Verde River;
4. Perennial or intermittent public waters used for recreational or commercial fish consumption;
5. Perennial or intermittent public waters used for water-based recreation such as swimming, wading, boating and other types of recreation in and on the water;
6. Perennial or intermittent wetlands adjacent to waters on the protected surface waters list; and
7. Perennial or intermittent waters of the state that cross into another state, the Republic of Mexico or the reservation of a federally recognized tribe.

#### Non-WOTUS Waters – Table A

This rulemaking adds the following non-WOTUS waters to the PSWL. The table below also includes a rationale for listing the water.

Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Comments
Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/113°35'31"	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Cottonwood Creek	Below confluence with unnamed tributary to confluence with Truxton Wash	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/113°30'40"	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Boot Lake	34°58'54"/111°20'11"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Little Ortega Lake	34°22'47"/109°40'06"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Mormon Lake	34°56'38"/111°27'25"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Potato Lake	35°03'15"/111°24'13"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Pratt Lake	34°01'32"/109°04'18"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.

Sponseller Lake	34°14'09"/109°50'45"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Vail Lake	35°05'23"/111°30'46"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Water Canyon Reservoir	34°03'38"/109°26'20"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Bonsall Park Lake	59th Avenue & Bethany Home Road at 33°31'24"/112°11'08"	Ornamental or urban ponds and lakes such as those owned by homeowners' associations and golf courses, added pursuant to an economic, environmental, and social cost-benefit analysis where the benefits of listing the water outweigh the costs and in response to a written request from the owner of the ornamental or urban pond or lake until the owner withdraws its request. ADEQ has received a request from the relevant municipality and determined that protecting this hydrologically isolated lake with the water quality standards in this article produces more benefits than costs.
Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/ 111°56'19"	Ornamental or urban ponds and lakes such as those owned by homeowners' associations and golf courses, added pursuant to an economic, environmental, and social cost-benefit analysis where the benefits of listing the water outweigh the costs and in response to a written request from the owner of the ornamental or urban pond or lake until the owner withdraws its request. ADEQ has received a request from the relevant municipality and determined that protecting this hydrologically isolated lake with the water quality standards in this article produces more benefits than costs.
Big Creek	Headwaters to confluence with Pitchfork Canyon Wash	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS that are similar to those in the federal program pursuant to ADEQ's ESE analysis.
Goudy Canyon Wash	Headwaters to confluence with Grant Creek	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/109°56'37"	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.

High Creek	Headwaters to confluence with unnamed tributary at 32°33'08"/110°14'42"	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Pinery Creek	Headwaters to State Highway 181	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Pinery Creek	Below State Highway 181 to terminus near Willcox Playa	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Post Creek	Headwaters to confluence with Grant Creek	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Riggs Flat Lake	32°42'28"/109°57'53"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS that are similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Rock Creek	Headwaters to confluence with Turkey Creek	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/109°54'41"	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Snow Flat Lake	32°39'10"/109°51'54"	Lake, pond, or reservoir that is a public water used as a drinking source, for recreational or commercial fish consumption or for water-based recreation such as swimming, wading and boating and other types of recreation in and on the water. Protected by WQS similar to those adopted in the federal program pursuant to ADEQ's ESE analysis.
Stronghold Canyon East	Headwaters to 31°55'9.28"/109°57'53.24"	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis. ADEQ has assigned designated uses of A&WcAZ, PBCAZ, and AgLAZ to this water in this rulemaking pursuant to the ESE analysis. Stronghold Canyon East was split into two reaches because the original reach is 3.76 miles in length with 1.44 miles above 5000' and 2.32 miles below 5000'.
Stronghold Canyon East	31°55'9.28"/109°57'53.24" to confluence with Carlink Canyon	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis. ADEQ has assigned

		designated uses of A&WcAZ, PBCAZ, and AgLAZ to this water in this rulemaking pursuant to the ESE analysis. Stronghold Canyon East was split into two reaches because the original reach is 3.76 miles in length with 1.44 miles above 5000' and 2.32 miles below 5000'.
Turkey Creek	Headwaters to confluence with Rock Creek	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Turkey Creek	Below confluence with Rock Creek to terminus near Willcox Playa	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Ward Canyon Creek	Headwaters to confluence with Turkey Creek	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.
Moonshine Creek	Headwaters to confluence with Post Creek	Perennial or intermittent public water used for recreational or commercial fish consumption or water-based recreation such as swimming, wading and boating, and other types of recreation in and on the water. Protected by WQS similar to those in the federal program pursuant to ADEQ's ESE analysis.

WOTUS-Protected Surface Waters – Table B

This rulemaking includes a list of WOTUS protected surface waters to provide consistency and clarity to stakeholders about how surface waters in Arizona are regulated. The waters listed in Table B have been regulated by ADEQ as WOTUS, under the law that is effective on 11/18/2022. Notwithstanding its inclusion in Table B, the status of a particular water identified as WOTUS can be contested by a person subject to an enforcement or permit proceeding related to that water.

Historically Regulated as WOTUS and Pending Confirmation – Table C

ADEQ has included Table C in this rulemaking as a table of waters that are regulated as WOTUS but do not have a formal WOTUS determination. ADEQ will continue gathering data on these waters to determine whether they should continue to be regulated under the Federal program or if they should more appropriately be protected by the SWPP. Notwithstanding its inclusion in Table C, the status of a particular water identified as WOTUS can be contested by a person subject to an enforcement or permit proceeding related to that water.

ADEQ has included Table C as a separate designation in this rulemaking to provide clarity to stakeholders on the status of a water during the SWPP rulemaking process. The waters on this list need additional analysis to determine whether they should continue to be considered a WOTUS. This list includes waters that are also

listed on Appendix B, waters that have been assessed as impaired during ADEQ bi-yearly water quality assessment, and waters that are protected by active AZPDES permits. The inclusion of a surface water in Table C of the PSWL does not change the jurisdictional status of a surface water for purposes of the CWA.

#### SWPP Best Management Practices – R18-2-217

ADEQ engaged WestLand Engineering & Environmental Associates (WestLand) to identify best management practices (BMPs) that would conform with the requirement in A.R.S. § 49-255.05. Specifically, the statute requires the identification of appropriate BMPs to be used when working within the ordinary high-water mark (OHWM) of intermittent or perennial non-WOTUS protected surface waters, or within the bed and bank of surface waters that materially impact state protected surface waters.

WestLand produced two reports that describe a list of BMPs to meet the following requirements:

1. Rules establishing BMPs for various activities enumerated in §49-255.05.
2. Notification requirements to ensure that activities enumerated in §49-255.05 do not violate applicable surface water quality standards.

The Construction General Permit (CGP) (see, e.g., Parts 1.5(3), 1.5(4), 2.3(3)(c), 3.8(2), and 7.0) uses a ¼ mile upstream distance to identify situations where activities near sensitive waters (impaired waters or outstanding Arizona waters) require additional review or discharge monitoring. ADEQ has determined that it is protective, including from both a distance and topography perspective (see A.R.S. § 49-255.05(A)(2)), to use a similar ¼ mile upstream threshold to determine material impact for purposes of determining applicability of these BMPs.

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

#### **Arizona Administrative Register**

*Summary:* The Administrative Register (Register) is a legal publication published by the Administrative Rules

Division that contains information about rulemaking activity in the state of Arizona. The issues referenced below include code sections being amended and introduced to Chapter 11, which involves the Department of Environmental Quality Water Quality Standards.

*Study Resource:* These publications mainly refer to and make reference to topics that contribute to the Economic, Small Business, and Consumer Impact Statements. The studies referred to and referenced in this publication provide a brief summary of tourism, agriculture, or other benefits as well as cost categories or data produced from the findings. The following items are addressed in individual registers cited below:

Arizona Administrative Register (1995). Notice of Proposed Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 1, Issue 50.

*Publication Study Resource:* Proposed new section to the modification of water quality standards on the grounds of net ecological benefit based on the following criteria:

1. The discharge of effluent creates or supports an ecologically valuable aquatic; wetland, or riparian habitat in an area where such resources are limited
2. The cost of treatment to comply with a water quality standard is so high that it is more cost effective to eliminate the discharge of effluent rather than upgrade treatment
3. It is feasible for a point source discharger to completely eliminate the discharge of effluent
4. The environmental benefits associated with the discharge of effluent under a modified water quality standard exceed the environmental costs associated with elimination of the discharge and destruction of the effluent dependent ecosystem
5. All practicable point source control discharge programs, including local pretreatment, waste minimization, and source reduction programs are implemented
6. The discharge of effluent under a modified water quality standard will not cause or contribute to a violation of a water quality standard that has been established for a downstream surface water
7. The discharge of effluent will not produce or contribute to the concentration of a pollutant in the tissues of aquatic organisms or wildlife that is likely to be harmful to humans or wildlife through food chain concentration.

Arizona Administrative Register (1996). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards For Surface Waters – Economic Small Business and Consumer Impact Statement, Volume 2, Issue 20.

*Publication Study Resource:* The adopted Net Ecological Benefit rule provides a benefit to the owners of wastewater treatment plants that support or create effluent dependent waters because it provides a mechanism for relief from a water quality standard that otherwise might force costly treatment plant upgrades. The adopted rule also provides ecosystem benefits in that it provides a regulatory incentive to maintain and preserve in-stream flows in areas where riparian and aquatic resources are limited. The continued discharge of effluent may provide net ecological benefits, even though an applicable water quality standard is not being met. Examples of possible ecological benefits include:

1. Enhancement, expansion or restoration of aquatic and riparian habitat for native, threatened or endangered aquatic species, or for migratory waterfowl
2. Provision or enhancement of habitat or food sources for native, threatened and endangered species that are terrestrial
3. Enhancement of species diversity
4. Enhancement or restoration of riparian values (e.g. cottonwood/willow habitat, improved bird and wildlife habitat)

Arizona Administrative Register (2001). Notice of Proposed Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 7, Issue 11.

*Publication Study Resource:* Proposed decision criteria for *Social and economic impact of Tier 3 antidegradation protection:* The Director may take into consideration the potential social and economic impact of a unique water classification and the establishment of Tier 3 antidegradation protection, including:

1. Impact of a prohibition of new point source discharges and expansion of existing point source discharges, including possible limits on discharges to the tributaries of a proposed unique water and possible impacts on growth and development.
2. Impact of possible future restrictions on land use activities in a unique water's watershed, including cattle grazing, timber harvesting, mining, recreation, and agriculture.
3. The impact of stricter requirements for §401 certification of federal permits and licenses, including NPDES and §404 permits.
4. Impact on private property rights and the potential for regulatory "takings."
5. Ecosystem and preservation values.

Arizona Administrative Register (2002). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 8, Issue 13.

Arizona Administrative Register (2008). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 14, Issue 52.

Arizona Administrative Register (2016). Agency Certificate Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 22, Issue 36.

*Publication Study Resource:* ADEQ proposed to eliminate the requirement that a discharger have a plan to eliminate the discharge under active consideration as part of what must be demonstrated. Communities and developers should benefit by eliminating an extra burden in seeking to use high quality effluent to create aquatic and riparian ecosystems.

Arizona Administrative Register (2017). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 23, Issue 6.

*Publication Study Resource:* Estimated costs and benefits to consumers and the public mentioned in recreation activities (e.g., Ironman at Tempe Town Lake), fishing activities, and agricultural productivity.

Arizona Administrative Register (2019). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 25, Issue 5.

*Publication Study Resource:* See notes regarding interface with AOT studies under *Agriculture in Arizona's Economy* and *The Economic Contributions of Water-related Outdoor Recreation in Arizona*, below.

### **Agriculture in Arizona's Economy**

*Summary:* This report explores agriculture's contribution to the Arizona economy by examining the entire agribusiness system in Arizona.

*Study Resource:* The economic contribution analysis was conducted using input-output modeling and the premiere software for this type of analysis, IMPLAN Version 3.1. IMPLAN is a modeling system of a regional economy that is based on national averages of production conditions. This model was refined based on the best available data to more accurately reflect production conditions in Arizona.

*Applicability to current benefit/cost estimating procedures:* Uses IMPLAN system to translate *direct* economic effects of some action into *secondary* effects, reflecting the multiplier effects of actions through the economic system. The practice represented by this modeling tool, widely used in economic impact assessments, would be a logical eventual extension of cost and benefit estimating for Arizona water bodies.

Kerna, A., & Frisvold, G. (2014). Agriculture in Arizona's Economy: An Economic Contribution Analysis. *Department of Agricultural & Resource Economics. University of Arizona.*

### **Buehman Canyon Creek – Economic Benefits of Unique Water Designation Study of Buehman Canyon Creek**

*Summary:* This study reviews the economic benefits of Buehman Canyon Creek for the consideration of determining the water body as a unique water designation.

*Study Resource:* Provides guidance on factors that need to be considered in a comprehensive examination of costs and benefits in the economic impact statement for proposed unique water designation.

*Applicability to current benefit/cost estimating procedures:* This study mentions economic benefits that are quantifiable but does not include the data methodology used to support the economic benefits associated with the proposed unique water designation for Buehman Canyon Creek.

Colby, B.G. (1996) Buehman Canyon Creek – Economic Benefits of Unique Water Designation Study – March 1996. *Arizona Department of Environmental Quality.*

### **The Economic Benefits of Recreation in Rural Arizona**

*Summary:* This report provides a summary analysis of tourism and recreation as factors influencing the state's economy and local economy's within the state.

*Study Resource:* This report summarizes park recreation tourism economic benefits, the benefits to rural areas, and the need to develop more facilities to access recreation lands. Drawing from the published survey of visitors of Arizona State Parks conducted between 1987-1988, visitors were asked how much money their group spent during their trip within 50 miles of the state park they were visiting, average expenditures were produced per visitor group per trip and were applied to park attendance counts to document total expenditures spent within 50 miles of state parks by visitors in 1987.

*Applicability to current benefit/cost estimating procedures:* The reference cited for this document, entitled "*The 1987-1988 Use Study of Arizona State Parks Visitors*," for the Arizona State Parks Board in 1989, provides some quantified data for visitor expenditures that lends itself to capturing economic benefits of this type.

Spear, S. (1989) Rural Arizona... The Economic Benefits of Recreation, A Summary Analysis of Tourism and Recreation as Factors Influencing State and Local Economies. *Arizona State Parks Board Statewide Planning Section*.

### **The Economic Contributions of Water-related Outdoor Recreation in Arizona**

*Summary:* A study of outdoor recreational activity on or along the water to estimate the level of participation in the state and the contributions from these activities to the county and state economies.

*Study Resource:* The analysis is structured around estimating three sets of metrics: participation, spending, and economic contributions. Participation estimates for this study relied largely on two data sources to characterize outdoor recreation on or along the water. Economic Contributions were estimated by combining spending estimates with data that models economic sector interactions in a given geography. Expenditure data were collected for different categories (e.g., groceries, fuel, equipment, etc.) as part of the OIA survey, which enabled allocation of spending to specific economic sectors. These data were then run through an IMPLAN™ model of the Arizona statewide economy using software produced by MIG, Inc. The resulting county-level and water-specific estimates reflect the contribution that outdoor recreation in those locales has on the statewide economy.

Appendix A in the document provides additional background information on economic contributions.

*Applicability to current benefit/cost estimating procedures:* See notes on IMPLAN under *Agriculture in Arizona's Economy*. The Arizona Office of Tourism (AOT) sponsors periodic generalized studies related to Arizona visitors, including types of activities, expenditures, economic impacts, etc. To the extent that benefit/cost modeling of water bodies/designations is expanded into specific consideration of benefits related to riparian-focused activities, these location/activity-specific studies (#4 as well as this one) can add to the specificity of benefits associated with activities of particular interest.

Southwick Associates (2019). *The Economic Contributions of Water-related Outdoor Recreation in Arizona: A Technical Report on Study Scope, Methods, and Procedures. Audubon Arizona.*

### **Socioeconomic consequences of mercury use and pollution**

*Summary:* In the past, human activities often resulted in mercury releases to the biosphere with little consideration of undesirable consequences for the health of humans and wildlife. This paper outlines the pathways through which humans and wildlife are exposed to mercury.

*Study Resource:* This paper examines the life cycle of mercury from a global perspective and then identifies several approaches to measuring the benefits of reducing mercury exposure, policy options for reducing Hg emissions, possible exposure reduction mechanisms, and issues associated with mercury risk assessment and communication for different populations. This study also briefly reviews the methods used to quantify the benefits to human health associated with reduced mercury exposure, which include Benefit-cost Analysis and the Cost-effectiveness Analysis.

*Applicability to current benefit/cost estimating procedures:* This paper does not include any quantifiable data used in its review of the Benefit-cost Analysis or Cost-effectiveness Analysis.

Swain, E. B., Jakus, P. M., Rice, G., Lupi, F., Maxson, P. A., Pacyna, J. M., ... & Veiga, M. M. (2007). Socioeconomic consequences of mercury use and pollution. *Ambio*, 45-61.

### **Nature-based Tourism and the Economy of Southeastern Arizona**

*Summary:* This study documents expenditures in the Sierra Vista area by visitors to the San Pedro Riparian National Conservation Area (RNCA) and by bird watchers at Ramsey Canyon Preserve. Information on visitor expenditures, characteristics and preferences is reported, along with implications for nature-based tourism in southeastern Arizona. This study examined visitation to only two natural areas and so economic impacts reported here represent only a portion of the impacts of visitor spending associated with all nature preserves located in southeastern Arizona. The study indicates that 95% of visitors to Ramsey Canyon and the San Pedro RNCA go to at least one other site in southern Arizona on a typical visit to the area, and make expenditures in communities located near these sites.

*Study Resource:* The expenditure analysis indicates the importance of an overnight stay for communities to experience significant economic benefits from visitors.

*Applicability to current benefit/cost estimating procedures:* See notes regarding interface with AOT studies under *The Economic Contributions of Water-related Outdoor Recreation in Arizona*, above.

Crandall, K., Leones, J., & Colby, B. G. (1992). *Nature-based Tourism and the Economy of Southeastern Arizona: Economic Impacts of Visitation to Ramsey Canyon Preserve and the San Pedro Riparian National Conservation Area, Final Report*. Department of Agricultural and Resource Economics, the University of Arizona.

#### **Notes on inclusion of source studies and data preparation for wetlands meta-data**

*Summary:* This memorandum provides reasons for excluding specific wetland valuation studies from the meta-data that was used in the meta-analysis for estimating national benefits in the *Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule* (U.S. EPA and Army, 2021).

*Study Resource:* Provides an overview of valuation scenarios considered in literature and the assumptions made to fill in data gaps for each study used for wetlands meta-data.

*Applicability to current benefit/cost estimating procedures:* Provides a critical meta-analysis of literature and studies that support estimating national benefits in the *Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule* (U.S. EPA and Army, 2021).

ICF. 2021. Notes on inclusion of source studies and data preparation for wetlands meta-data. Memorandum to Todd Doley and Steve Whitlock. November 22, 2021.

### **Using Meta-Analysis for Large-Scale Ecosystem Service Valuation: Progress, Prospects, and Challenges**

*Summary:* This article discusses prospects and challenges related to the use of meta-regression models (MRMs) for ecosystem service benefit transfer, with an emphasis on validity criteria and post-estimation procedures given sparse attention in the ecosystem services literature. Includes a meta-analysis of willingness to pay for water quality changes that support aquatic ecosystem services, and the application of the model to estimate water quality benefits under alternative riparian buffer restoration scenarios in New Hampshire’s Great Bay Watershed. These illustrations highlight the advantages of MRM benefit transfers, together with the challenges and data needs encountered when quantifying ecosystem service values.

*Study Resource:* The illustrated case study discussed in this paper helps to demonstrate how evaluations of issues can help clarify the suitability of Meta-Regression Modeling (MRM) predictions for benefit transfers.

*Applicability to current benefit/cost estimating procedures:* This illustrates benefit transfers using scenarios of potential water quality, setting variables, geospatial and socioeconomic data for benefit transfer scenarios, the data methodology, indexing calibration, WTP estimate predictions per household, and the challenges for Large-Scale Ecosystem Service Valuations.

Johnston, R. J., & Bauer, D. M. (2020). Using meta-analysis for large-scale ecosystem service valuation: progress, prospects, and challenges. *Agricultural and Resource Economics Review*, 49(1), 23-63

### **Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule**

*Summary:* This Economic Analysis (EA) assesses the potential impacts of the proposed changes to the definition of “waters of the United States” based on the potential effects to Clean Water Act (CWA) programs that rely on that definition.

*Study Resource:* Provides an overview of economic analysis under the primary and secondary baselines for the CWA. The paper discusses the multiple components of the secondary baseline assessment, and provides

estimates of the benefits and costs associated with this assessment, by states and for the US.

*Applicability to current benefit/cost estimating procedures:* This report provides broad guidance for estimating costs and benefits, key components of which, including benefits based on WTP, and various cost categories, were incorporated into a recommended BCA modeling structure for ADEQ.

U.S. Environmental Protection Agency and Department of the Army. (2021). *Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule.*

[https://www.epa.gov/system/files/documents/2021-11/revised-definition-of-wotus\\_nprm\\_economic-analysis.pdf](https://www.epa.gov/system/files/documents/2021-11/revised-definition-of-wotus_nprm_economic-analysis.pdf)

### **Supplementary Material to the Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule**

*Summary:* This document includes the Compendium of State and Tribal Regulations for CWA programs by state that corresponds to the *Economic Analysis for the Proposed “Revision Definition of ‘Waters of the United States’” Rule* report cited above.

*Study Resource:* See *Economic Analysis for the Proposed “Revision Definition of ‘Waters of the United States’” Rule* report cited above.

*Applicability to current benefit/cost estimating procedures:* Adds additional context to the approach EPA used in preparing estimates of costs and benefits, as addressed in *Revised Definition of ‘Waters of the United States Rule.*

U.S. Environmental Protection Agency and Department of the Army. (2021). *Supplementary Material to the Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule.*

[https://www.epa.gov/system/files/documents/2022-01/epa-hq-ow-2021-0602-0087\\_content.pdf](https://www.epa.gov/system/files/documents/2022-01/epa-hq-ow-2021-0602-0087_content.pdf)

### **Upgrading Wetland Valuation via Benefit Transfer**

*Summary:* This study uses updated meta-data on wetland valuation to illustrate how a state-of-the-art meta-regression framework that is consistent with economic theory can be adapted to generate benefit transfer

predictions for incremental changes in wetland acreage over space and time. This study also applies this framework to estimate losses in benefits for realistic changes in wetland acreage for some sub-watersheds, as can be expected under the proposed re-definition of the “Waters of the United States” to be protected under the Clean Water Act (CWA).

*Study Resource:* This study provides an illustration of how recent advances in meta-analytic methods could be applied to value changes in wetland acreage regionally or nationally.

*Applicability to current benefit/cost estimating procedures:* This study compiles an updated meta-data set on willingness to pay (WTP) to preserve or restore wetlands in the United States, drawing from 17 primary valuation studies as current as 2016. This study also takes advantage of recent advances in meta-regression modeling and computation of predicted benefits via the econometric framework proposed in the previous Moeltner 2019 study within the context of valuing surface water quality changes via Benefit Transfers (BT).

Moeltner, K., Balukas, J. A., Besedin, E., & Holland, B. (2019). Waters of the United States: Upgrading wetland valuation via benefit transfer. *Ecological Economics*, 164, 106336.

All of the above studies are available at: <http://azdeq.gov/node/8173>.

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

Not applicable.

**9. A summary of the economic, small business, and consumer impact:**

**A. An identification of this rulemaking:**

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) contains amendments made by ADEQ to 18 A.A.C. 11, Article 1, in order to adopt and revise Surface Water Quality Standards (WQS) within the State of Arizona. Additionally, this EIS addresses the adoption of 18 A.A.C 11, Article 2, which adopts WQS for non-WOTUS protected surface waters listed on the Protected Surface Waters List. The WQS in Article 2 do not apply generally, and may only be applied to listed surface waters.

## **B. A brief summary of the EIS:**

Interested stakeholders should review ADEQ's Social, Environmental, and Economic cost/benefit analysis technical paper at [azdeq.gov/node/8173](http://azdeq.gov/node/8173) for more in-depth information. ADEQ's contractors have drafted the paper to meet the requirements statutory EIS requirements. Additionally, ADEQ has also addressed this topic earlier in the preamble and provided specific information regarding the costs and benefits of this proposed rule. The three case-study waterbodies ADEQ has used to in this rulemaking provide a contrasting and otherwise informative set of examples by which to illustrate various aspects of the economic impact of this rule.

McClure's quantitative analysis based on the data available for various cost and benefit factors incorporates a framework for addressing additional, qualitative aspects of protecting Arizona waterbodies. These qualitative components add context to the quantified portion of ADEQ's analysis and reflect potential elements of the cost/benefit analysis that could be refined during formal rulemaking. Including these qualitative discussions also helps illustrate certain limitations in the current modeling process.

The quantitative elements synthesize the following types of information:

1. Key characteristics of the three case-study waterbodies for which the cost/benefit process will be performed and which influence the application of various cost and benefit factors.
2. Quantified cost and benefit factors to apply to the waterbodies and to the households in the two types of analysis areas.
3. Factors for updating cost and benefit estimates derived (by others) in preceding years and for discounting streams of costs and benefits estimated to occur over a subsequent 20-year period.
4. Cost and benefit totals for each waterbody, and the ratio of benefits to costs.

Qualitative aspects of the analysis are summarized in the contractor report through a series of tables that discuss the broad implications of additional benefit and cost categories not quantified in the current model, Environmental Justice observations based on the quantified demographic data, and the sensitivity of model results to various quantified variables, including how results compared to certain Arizona-specific cost and benefit estimates in the EPA document.

## **C. Identification of the person who will be directly affected by, bear the costs of, or directly benefit from**

**the rules:**

The table below summarizes the persons who will be directly affected by, bear the costs of, or directly benefit from the rules in a manner consistent with the requirements of the EIS statute. Although the analysis completed by the consultant is more complete, this section may serve as a more accessible summary.

This rulemaking could affect ADEQ, political subdivisions, public and private entities who wish to obtain an AZPDES permit for a discharge to a listed surface water, public and private entities who may need to operate under and AZPDES general permit, and public and private laboratories that test for permit compliance. It will also create health, social, and economic benefits to the general public from access to clean water and protection of fish and wildlife.

The AZPDES permitting program is implemented by ADEQ through various general and individual permits. Individual permit holders can include public and private WWTPs, publicly owned treatment works (POTW), fish hatcheries, power plants, mines, truck stops, drinking water plants, marinas, and Water Quality Assurance Revolving Fund (WQARF) remediation projects. Because the WQS adopted in Article 1 of this rulemaking are already in effect, and there are planned of current discharges to any waters listed in Article 2, ADEQ expects the costs of adopting this rulemaking to be extremely low. Nonetheless, based on the information above, ADEQ has identified the following list of potential affected parties:

*State and local government agencies*

ADEQ,

Agencies operating under individual or general AZPDES permits

*Political subdivisions*

Political subdivisions generally, public WWTPs, POTWs, public laboratories Non-WWTP

government entities operating under AZPDES individual permits Non-WWTP government entities

operating under AZPDES general permits

*Privately-Owned Businesses*

Private entities operating under general permits Private, non-WWTP individual permit holders

Private WWTPs

Private laboratories

*The General Public*

**D. Cost/Benefit analysis:**

The costs/benefits for each of these potentially affected parties is listed below. Use the following key to decipher the range of costs:

<b>Minimal</b>	<b>Moderate</b>	<b>Substantial</b>	<b>Significant</b>
\$10,000 or less	\$10,001 to \$1,000,000	\$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.

<b>Description of Affected Groups</b>	<b>Description of Effect</b>	<b>Increased Cost/ Decreased Revenue</b>	<b>Decreased Cost/ Increased Revenue</b>	
ADEQ	Possible increase in number of surface waters identified as impaired and corresponding changes in 303(d) listings and TMDLs.	Minimal		
	Improved implementation and enforcement of the SWQS	Minimal		
	Administrative costs associated with future rulemakings	Significant		
	Predictability, reduced transaction costs, and responsiveness to stakeholders from avoiding federally-promulgated SWQS.		Minimal	
	Compliance with state and federal law.		Minimal	
	Support of ADEQ's mission to protect and enhance public health and the environment.		Substantial	
Political subdivisions generally	Tax revenues and indirect benefits of clean water dependent industries (including outdoor recreation, tourism, etc.)		Cumulatively substantial	
	Increased monitoring costs	Minimal		
	Public WWTP and/or POTW	Evaluation of compliance with standards	Minimal	
		Cost of compliance with new WQS	Minimal	
	Public laboratories	Improved implementation and enforcement of water quality standards by political subdivisions with pretreatment programs.		
		Clarification and correction of errors.		Moderate
	Testing for WQS with accompanying costs.	Minimal		

Non-WWTP Government entities	Clarification and correction of errors. Cost of compliance with new WQS.	Minimal	Significant
Private entities operating under general permits	Clarification and correction of errors. Cost of compliance with new SWQS.	Minimal	Significant
Private WWTP	Clarification and correction of errors. Cost of compliance with new SWQS		Significant
Laboratories	Clarification and correction of errors. Testing for new SWQS with accompanying costs.	Minimal	Significant
General Public	Economic and social benefits of clean water		Cumulatively substantial
Non-WWTP individual permit holders (Power Plants, Mines, Marinas, etc.)	Clarification and correction of errors. Cost of compliance with new SWQS.	Minimal, if any	Significant

**E. A general description of the probably impact on private and public employment in business agencies, and political subdivisions of this state directly affected by the rulemaking:**

ADEQ estimates that this rulemaking will not have an impact on public or private employment. To the best of ADEQ's knowledge, the agency does not believe that any of the rule contained in this rulemaking package will result in a private or public entity needed an AZPDES permit.

**F. A statement of the probably impact of the rules on small business:**

The agency uses the term "small business" consistent with A.R.S. § 41-1001(21) which defines a "small business" as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

**1. An identification of the small business subject to the rules.**

Among the stakeholders listed above, many could meet the A.R.S. § 41-1001(21) definition of small business. For example, a WWTP that would potentially discharge to a non-WOTUS protected surface water could be affected by this rule. In its current form, ADEQ cannot identify any small businesses that will be negatively

affected by this rulemaking. Conversely, some small businesses may see some benefit in the clarification of WOTUS status of some waters and a clarification of what standards apply to those waters. Some recreational tourism related group may also see benefits from this rulemaking.

**2. The administrative and other costs required for compliance with the rules:**

Any potential compliance costs associated with this rulemaking would vary based on the stakeholder involved. ADEQ's examination of those costs is addressed in the matrix above and the consultants report.

**3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035.**

In the event that a small business must acquire an AZPDES permit for a discharge to a non-WOTUS protected surface water, ADEQ has adopted water quality standards that allow ADEQ to establish variances, site-specific standards, or account for natural background pollutants when designing the permit.

**4. The probable costs and benefits to private persons and consumers who are directly affected by the rules:**

ADEQ's economic consultants prepared an executive summary which address the probable costs/benefits of and individual affected by these rules.

**G. A statement of the probable effect on state revenues.**

This rule should have a de minimus effect on state revenues.

**H. A description of any less instructive or less costly alternative methods of achieving the purpose of this rulemaking:**

ADEQ continually reviews and revises its WQS. These standards are adopted to protect public health or

Cost and Benefit Factors	Class 1 - sky island stream - Cochise Stonghold Cyn.	Class 2 - isolated lake - Pintail Lake & marshes	Class 3 - unique waterbody - Quitobaquito Pond
Size (acres or acre-equivalents (Class 1))	21.76	65.00	0.50
Forested?	Yes	Yes	No
<b>Costs and benefits over a 20-yr. period, discounted</b>			
<b>Costs</b>			
404 permits	\$9,344	\$9,344	\$9,344
Mitigation	64		
ADEQ Admin	\$62,641	\$111,067	\$74,938
<b>Total</b>	<b>\$71,985</b>	<b>\$120,411</b>	<b>\$84,282</b>
<b>Benefits, from willingness-to-pay (WTP) factors</b>			
Local	\$5,509,181	\$7,840,675	\$3,151
Non-local	\$8,635,112	\$54,780,036	\$4,066
<b>Total</b>	<b>\$14,144,293</b>	<b>\$62,620,711</b>	<b>\$7,216</b>
Arizona component	\$14,982,646	\$68,136,424	\$8,045
<b>Benefit/cost comparison</b>			
Total benefits, Arizona	\$14,982,646	\$68,136,424	\$8,045
Total costs	\$71,985	\$120,411	\$84,282
Benefits/costs (first number in ratio: ___ to 1)	208.1	565.9	0.10

welfare and enhance the quality of water in the state. This means that WQS should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration the use and value of water for public water supplies, recreation in and on the water, and agricultural, industrial, and other purposes including navigation.

EPA will review ADEQ's Article 1 WQS to determine if they are consistent with the requirements of the CWA. If EPA determines that ADEQ's SWQS do not meet the requirements of the CWA, EPA will disapprove ADEQ's SWQS and promulgate federal standards. ADEQ has, therefore, developed the proposed WQS to comply with federal and state law, and to avoid federally promulgated WQS. Additionally, water quality criteria must be based on sound scientific rationale to protect the designated use, and not economic considerations. ADEQ is not aware of any less intrusive or less costly alternative methods that would meet ADEQ's legal obligations.

**I. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

ADEQ recommends that interested stakeholder review ADEQ's Arizona Water Quality Standards technical paper for additional information about how data for calculating water quality standards is obtained. The paper can be accessed here: [https://static.azdeq.gov/wqd/swpp/wqs\\_tp.pdf](https://static.azdeq.gov/wqd/swpp/wqs_tp.pdf).

For information regarding ADEQ's economic analysis, ADEQ recommends that interested stakeholder review the consultant's final report and ADEQ's technical paper describing it. ADEQ's technical paper is available here: [https://static.azdeq.gov/wqd/swpp/ese\\_tp.pdf](https://static.azdeq.gov/wqd/swpp/ese_tp.pdf) and a copy of the consultant report is available here: [https://static.azdeq.gov/wqd/swpp/ese\\_report.pdf](https://static.azdeq.gov/wqd/swpp/ese_report.pdf).

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

Appendix A

- Non-substantive changes to correct CAS numbers and ensure values represented previously approved standards.
- Barium missing the distinction T after the PBC and FBC standards.
- Cadmium missing the (d) footnote.
- DDT and its breakdown products fixed to be "14 ug/L" for FBC and "0.0002 ug/L" for FC.
- Corrected 2,4,5 - TP PBC standard that was inadvertently crossed out.
- Corrected instances where (e) was transformed to € and (c) was transformed to © by word editing software.

- Removed CAS number for Tributyltin to avoid confusion and ensure applicability to all tributyltin species.

#### Appendix B

- EPA approved fish consumption use was missing from the Cherry Creek listing with the description "Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"
- EPA approved Aquatic & Wildlife coldwater use was missing from the Christopher Creek listing with the description "Headwaters to confluence with Tonto Creek."
- Modified description of Antelope Creek pursuant to EPA comment to reflect that the surface water segment runs from the Headwaters of Antelope Creek to the confluence with Martinez Creek.
- Modified descriptions of 3 Hassayampa River segments pursuant to EPA comment to more accurately identify the reaches.
- Modified the description of Weaver Creek pursuant to EPA comment to reflect that the surface water segment runs from the Headwaters to the confluence with Antelope Creek, tributary to Martinez Creek.
- Modified the description of the Santa Cruz EDW and Santa Cruz River pursuant to EPA comment to more accurately describe the starting point and end point of the segment.
- Modified the description of Camp Creek pursuant to EPA comment to reflect that the segment runs to the Verde River.
- Modified the description of the Del Monte Gulch (EDW) pursuant to EPA comment to reflect that the segment runs to the Verde River.
- Modified the description of Sycamore Creek pursuant to EPA comment.

#### R18-11-201

- Definition for "Geometric Mean" was missing the associated formula.

#### R18-11-202

- Corrected R18-11-202(B)(2)(f) to read "Pond of sump" instead of "pon or sump."

#### R18-11-210

- Corrected an instance where WOTUS was inadvertently spelled "WTOSU."

#### R18-11-215

- Non-substantive changes to correct CAS numbers and ensure values are correct.

- Barium missing the distinction T after the PBC and FBC standards.
- Cadmium missing the (d) footnote.
- Corrected instances where (e) was transformed to € and (c) was transformed to © by word editing software.
- Removed CAS number for Tributyltin to avoid confusion and ensure applicability to all tributyltin species.

R18-11-216

Table A

- Split Stronghold Canyon into two reaches with more appropriate DUs.
- Removed Alvord Park Lake, Cortez Park Lake, and Encanto Park Lake from the non-WOTUS protected surface waters list at the request of the City of Phoenix.

Table B

- Modified header language to provide clarity.

Table C

- Modified header language to provide clarity. Multiple commentors asked ADEQ to clarify the meaning of the Table headings used in R18-11-216. The changes made to these headings are non-substantive and serve to better illustrate the regulations that apply to listed waters.

R18-11-217

- Added the word "upstream" after "1/4 mile" to clarify the rule.

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

**The Protected Surface Waters List**

ADEQ received a number of comments regarding waters listed on the Protected Surface Waters List in R18-2-

216. Generally, those comments expressed confusion about how waters on each list were regulated. As a response to those comments ADEQ has modified the header text for the tables and provides the following response to the comments listed below:

**Comment 1: Municipality** - *Article 2, Table C has not been in any prior version of the proposed rule and creates uncertainty about whether these waters would be regulated as WOTUS.*

*Following an October 5th conversation with ADEQ, the City appreciates that Table C represents ADEQ's effort to increase transparency and that ADEQ's intent is that these waters will be regulated as WOTUS. The City recommends ADEQ add clarifying language to the title and introduction paragraph for Table C, explaining that these waters were determined previously by ADEQ to be WOTUS, are still being regulated as WOTUS, and that these determinations are being re-affirmed due to the passage of time (or other reason, as determined during ADEQ's analysis). As written, there is a significant lack of clarity for permittees, resulting in an increased risk of illicit discharges in these waters and creating an apparent contradiction between Article 1 and Article 2 WOTUS lists.*

**ADEQ Response:** ADEQ has modified the headers for the table and added language to this preamble to clarify that waters listed in Table C will be regulated as WOTUS. If any of these waters are further evaluated and the result is a non-WOTUS determination made through any of the mechanisms mentioned in the heading, the water will then be evaluated for regulatory status under Article 2.

**Comment 2: Non-Profit** - *We appreciate the amount of staff time and effort that goes into development of a program such as the SWPP. Regarding the proposed Protected Surface Waters List, [non-profit] feels that it is important to protect the waters currently listed in Appendix B of Article 1. The proposed lists in Tables A and B do not appear to include the waters currently listed in Appendix B and the creation of Table C introduces uncertainty. Will those waters listed on Table C no longer be protected? Why was Table C created? What further study would indicate that a waterway should be removed from protections?*

**ADEQ Response:** ADEQ created the additional tables to provide clarity to stakeholders about the status of WOTUS determinations for Arizona waterways. ADEQ has not changed the regulatory scheme that applies to waters listed in Appendix B.

**Comment 3: Mining Group** - *[Mining Group] believes that the most prudent approach in the final version of the surface water protection rules would be for ADEQ to remove any type of suggested WOTUS list or any other form of WOTUS designations.*

*Such an approach is preferred because the status of the WOTUS definition under the CWA is in flux due to EPA's proposed "Revised Definition of 'Waters of the United States'" (see 86 Fed. Reg. 69,372 (Dec. 7,*

2021)) (final version of rule currently being reviewed by the Office of Management and Budget) and the pending U.S. Supreme Court review of the WOTUS-related decision in *Sackett v. EPA*, 8 F.4th 1075 (9th Cir. 2021) (oral argument heard October 3, 2022). Such an approach would avoid ADEQ creating potentially erroneous assumptions (which could only be changed by subsequent rulemaking) that certain waters are WOTUS even when ADEQ is not clear how WOTUS will be defined three months, six months, or a year from now.

Although we believe not including a list of WOTUS would be the preferred approach, we support ADEQ's addition of language to Table B (WOTUS Protected Surface Waters) of proposed R18-11-216 to clarify that a party can contest a specific water's status as WOTUS in a subsequent permit or enforcement proceeding, in a challenge to identification of the water as an impaired WOTUS, and/or in a challenge to a proposed TMDL for the water as an impaired WOTUS. Because of the regulatory and judicial uncertainty surrounding the definition of WOTUS, such a recognition of the tentative nature of the waters listed in Table B is appropriate.

We also support ADEQ's inclusion of a separate Table C that identifies certain water segments as historically regulated as WOTUS but that need further study. We interpret this table as simply listing waters that may qualify as WOTUS now or in the future, but for which additional analysis is necessary and which are not currently identified as "WOTUS protected surface waters" by rule. This reflects the reality that ADEQ has not had the resources to conduct a detailed jurisdictional analysis on every surface water in Arizona, especially those where a significant nexus analysis is required before jurisdiction can be asserted under current law.

Identifying that the WOTUS status of the waters on Table C is uncertain, rather than assuming they constitute WOTUS, is an appropriate approach if ADEQ wishes to have lists of waters in the final rule.

If ADEQ maintains Tables B and C in the final version of the surface water protection rules, [mining group] requests that the preamble language found at the bottom of page 2352, 28 A.A.R., and at the top of page 2353, 28 A.A.R. be revised to ensure that it is consistent with the lead-in language to both Table B (see 28 A.A.R. at 2416) and Table C (see 28 A.A.R. at 2420) of proposed R18-11-216. In addition, ADEQ should make clear that waters appearing on Table C ultimately may be determined not to constitute either a WOTUS or a non-WOTUS protected surface waters (e.g., an ephemeral water that does not possess a significant nexus with a traditional navigable water).

**ADEQ Response:** ADEQ appreciates the support in labeling tables and the suggestions provided in this comment. ADEQ has modified the headings in the final rulemaking to help provide clarity and consistency about how waters are regulated. ADEQ has listed all known WOTUS as part of the PSWL on either Table B or Table C because the new §49-221 requires that the PSWL contain "[a]ll WOTUS." Lastly, ADEQ has modified the table headings to create clarity that waters listed on Table B and Table C are regulated as WOTUS.

**Comment 4: Public Utility** - Under the SWPP, protected surface waters include all WOTUS (Waters of the United States) as defined by 42 U.S.C. § 1362(7) of the Federal Water Pollution Control Act (CWA) and waters of the state that are listed on the protected surface waters list under A.R.S. §49-221(G). A.R.S. § 49-202(38). The Protected Surface Water List (PSWL) in proposed rule A.A.C R18-11-216 identifies three categories of waters in Tables A through C: Non-WOTUS Protected Surface Waters, WOTUS Protected Surface Waters, and Historically Regulated as WOTUS and in Need of Further Study. SRP appreciates ADEQ's efforts to add clarity by distinguishing between WOTUS protected surface waters and non-WOTUS protected surface waters, consistent with the statutory framework. See A.R.S. § 49-202 (27) & (54). SRP believes this distinction will assist regulated entities in preparing permit applications because it makes clear which regulations apply to which waters, at least from ADEQ's perspective.

SRP also recognizes the continuing uncertainty regarding the scope of WOTUS impacts ADEQ's ability to make WOTUS/non-WOTUS determinations and that there will need to be an ongoing regulatory process to update Tables A through C. SRP understands that ADEQ began the process of making updated jurisdictional determinations, based on the currently applicable WOTUS definition. SRP also understands that those updated determinations are reflected in "Table A: Non-WOTUS Protected Surface Waters" and "Table B: WOTUS Protected Surface Waters." While the scope of WOTUS may change following the Supreme Court's decision in *Sackett v. U.S. Environmental Protection Agency* and future rulemakings by the U.S. Environmental Protection Agency, SRP recommends that ADEQ remove the language preceding Table B that identifies ADEQ's determinations as tentative, as such language creates confusion regarding the distinction between the waters listed in Table B and those identified in "Table C: Historically Regulated as WOTUS and in Need of Further Study" (Table C Waters).

It is unclear how Table C Waters fit within the statutory scheme of A.R.S. § 49-221(G) which identifies WOTUS and non-WOTUS protected surface waters. Because ADEQ previously determined such waters to be WOTUS, by including such waters in Appendix B of Title 18, Chapter 11 of the Arizona Administrative Code,<sup>1</sup> SRP interprets the proposed regulation to mean that ADEQ will regulate the Table C Waters as WOTUS until ADEQ has had the opportunity to make an updated jurisdictional determination. Nonetheless, SRP recommends that the regulation expressly state as such in the text preceding Table C. In addition, ADEQ should rename Table C to better reflect ADEQ's intent that the Table C Waters will be regulated as WOTUS until ADEQ makes a different regulatory determination.

SRP also asks that ADEQ clarify the process by which ADEQ intends to address the regulatory status of the Table C Waters after completing the updated jurisdictional determinations. ADEQ should provide for an open and transparent rulemaking process, subject to notice and comment from the public, as it makes determinations regarding the Table C Waters. SRP suggests that ADEQ take a systemic approach and assess waters within the same watershed or sub-watershed to allow interested parties the opportunity to

*provide information in a systematic and predictable basis. This formalized rulemaking process is necessary because many of the Table C Waters would be regulated as non-WOTUS protected waters under Table A if they are not considered WOTUS and placed on Table B. For example, the entirety of the Salt River below Granite Reef Dam would be regulated as a non-WOTUS protected water if it is not a WOTUS. See A.R.S. 49-221(G)(1)(b). Similarly, all perennial and intermittent tributaries to the eight major rivers in Arizona (Bill Williams, Colorado, Gila, Little Colorado, Salt, San Pedro, Santa Cruz and Verde) must be placed on Table A if they are not WOTUS. A.R.S. 49-221(G)(1)(3)(b).*

**ADEQ Response** - As a result of the above comments, ADEQ has provided clarifying language in both the preamble and the headers to each table on the PSWL. To once again clarify, waters that are listed under Table A are regulated by the standards listed in Article 2 that apply to non-WOTUS protected surface waters.

Waters that are listed under Table B are protected as WOTUS under ADEQ's current regulations, and are protected by water quality standards in Article 1. Waters that are listed under Table C are protected as WOTUS under ADEQ's current regulations, and are protected by the water quality standards in Article 1.

ADEQ will continue to adhere to the notice and comment process outlined in the Arizona Administrative Procedure act during any future SWPP rulemakings.

#### **ADEQ's Economic, Social, and Environmental Cost/Benefit (ESE) Analysis**

ADEQ received multiple comments regarding the ESE analysis that was submitted as part of the proposed rulemaking. Much of the commentary regarding the process used by ADEQ is not directed at the specific standards adopted or the waters protected under the program, but at variables used throughout the process. ADEQ has not significantly modified our economic analysis between the NPRM and the NFRM as a result of these comments. ADEQ has selected excerpts from 4 comments that the agency believes accurately express the differing viewpoints of the comments submitting pursuant to the agency's NPRM. These excerpts regarding this process are copied below. Some comments are not presented in their entirety as ADEQ is only addressing portions of letters that specifically mentioned the cost-benefit analysis in this section of the NFRM.

**Comment 1: Non-Profit** - *There is no requirement to consider the impacts and negative consequences, including the costs, of not establishing water-quality standards at a particular level for excluded ephemeral waters and springs that do not reach Traditional Navigable Waters. The ecosystem services provided by streams and springs should be part of any cost/benefit analysis.*

*Social justice and environmental justice should be considered as part of any analysis as well. The narrative accompanying the rule on page 18, Economic, Social and Cost-benefit analysis states, "1. If the water is not categorically excluded from the SWPP as defined in § 49-221 and the economic, social and environmental benefits of adding the water outweigh the economic, environmental and social costs of excluding the water from the list, the water may be added to the PSWL." The rule should be modified to clarify that the water **shall** be added, rather than may be added to protect additional waters.*

*The rule includes no consideration of the value of cultural waters for the 22 Tribes and other Indigenous peoples. There is no requirement for protection for this use. This huge oversight in the legislation should be addressed in the implementation of the program. An example is the cost-benefit analysis used for Quitobaquito pond. It does not recognize the economic impact of harm to this pond relative to cultural value nor does it recognize the benefits. As is acknowledged by ADEQ, it also does not adequately address the importance as habitat for rare and endangered species (rule package page 2345).*

*The Arizona Department of Environmental Quality (ADEQ) should adopt and apply water-quality standards for non-WOTUS protected surface waters based on Outstanding Arizona Waters designation. Additionally, the Surface Water Protection Program should apply to ephemeral waterways and an aquatic and wildlife (ephemeral) designated use should be adopted.*

**Comment 2: Tribal Group** - *Of concern is the cost-benefit analysis in the proposed rule as it may be inadequate for properly recognizing and valuing water bodies that have cultural or spiritual importance to the Tribe and/or other Arizona tribes. Given the Arizona Pollutant Discharge Elimination permit for Resolution Copper Mine, LLC, and the resulting litigation initiated by the Tribe, the Tribe is wary of efforts to assign monetary value to cultural or spiritual resources. Furthermore, numerous off-reservation streams, washes and springs that are sacred to Arizona's Native American tribes may slip through the draft classification scheme.*

**Comment 3: Mining Group** - *Commenter has several concerns with ADEQ's proposed approach to calculating and considering the economic, social, and environmental costs and benefits that (1) would result from the adoption of a water quality standard at a particular level or for a particular water category for non-WOTUS surface waters (see A.R.S. § 49-221(A)(2)); or (2) would be used to determine whether to add or remove non-WOTUS surface waters from ADEQ's protected surface water list (see A.R.S. § 49-221(G)(4), (6)). These concerns include:*

- *ADEQ's cost-benefit approach does not appear to accurately evaluate the potential economic, social, and environmental costs and benefits of imposing water quality standards on non-WOTUS surface waters, given that ADEQ simply is proposing standards that are equal to those imposed on WOTUS waters using very conservative approaches and criteria following EPA guidance. The requirement for ADEQ to conduct a cost-benefit approach under A.R.S. § 49-221(A)(2) was intended to avoid imposition of national criteria adopted by EPA, which do not necessarily account for the unique nature of Arizona's waters, to non-WOTUS surface waters in Arizona. AMA recognizes that some of Arizona's existing surface water quality criteria for WOTUS waters, and which are being applied to non-WOTUS waters in the NPRM, do account for Arizona species or other Arizona-specific conditions. However, this is not true across the entire suite of criteria that are being proposed to be applied to non-WOTUS protected surface waters.*
- *There does not appear to be a separate cost-benefit approach or analysis when ADEQ is considering adding or removing non-WOTUS surface waters from the protected surface water list or when it is evaluating whether to apply EPA-based surface water quality standards to non-WOTUS waters. These are two different determinations that should consider different costs and benefits and potential approaches, yet that is not fully addressed in the NPRM. For instance, after discussing some cost and benefit factors and including a table on what ADEQ describes as class 1 through class 3 surface features, ADEQ concludes that based on its modeling it proposes to protect class 1 and class 2 waters with water quality standards that are like those applied to waters subject to only federal jurisdiction. See 28 A.A.R. at 2345. However, the only cost categories used were for "404 permits," "mitigation," and "ADEQ Admin." The costs*

categories do not make sense because the evaluated classes of surface waters are non-WOTUS and therefore would not be subject to 404 permitting or mitigation. In contrast, such waters would be subject to costs associated with potential AZPDES permitting (including under both individual and general permits), compliance with surface water quality standards at the same level as federally-regulated waters, potential impaired waters listings and TMDLs, compliance with best management practices for activities occurring within the ordinary high water mark of such waters or for certain activities within the bed and banks of upstream waters that materially impact the downstream non-WOTUS protected surface water. None of these costs are even listed, mentioned, or discussed in ADEQ's cost-benefit analysis.

- Commentor questions ADEQ's and its consultant's use of the joint EPA and Corps 2021 Economic Analysis for the Proposed Revised Definition of WOTUS Rule ("2021 Economic Analysis") as a basis for determining costs and benefits related to imposition of standards on non-WOTUS waters. Overall, we strongly disagree with using an economic model that was crafted specifically to justify a broad expansion of federal jurisdiction over surface waters in the United States as the basis for the cost/benefit analysis under Arizona's surface water protection program. Use of such an economic model likely resulted in biases towards overestimating benefits and underestimating costs.
- We also agree with many of the criticisms to the 2021 Economic Analysis contained within an expert report submitted to EPA and the Corps as an exhibit to the Waters Advocacy Coalition's comments on EPA's and the Corps' revised definition of WOTUS. See David Sunding, Ph.D., and Gina Waterfield, Ph.D., The Brattle Group, Review of the Environmental Protection Agency and Department of the Army 2021 Economic Analysis for the Proposed "Revised Definition of 'Waters of the United States'" Rule (Feb. 7, 2022) (copy attached and incorporated as part of these comments). The criticisms, which would apply to ADEQ's use of the 2021 Economic Analysis, include:
  - EPA and the Corps failed to explain the significant differences between the estimates of benefits and costs found in the 2021 Economic Analysis and the estimates used just two years prior by the same agencies for the Navigable Waters Protection Rule. See *id.* at 7.
  - The cost estimate analysis in the 2021 Economic Analysis fails to quantify costs associated with avoidance and minimization measures, even though such costs are likely to be significant in comparison with other identified permit costs. See *id.* at 9-10.
  - The cost estimate analysis in the 2021 Economic Analysis fails to quantify implicit costs, such as project delays or transferring projects from jurisdictional to non-jurisdictional areas. See *id.* at 10.
  - The benefit estimate analysis in the 2021 Economic Analysis relies heavily on a contingency valuation approach, which has a "tendency [for] survey respondents to provide inaccurate and inconsistent answers. The agencies do not discuss these important shortcomings of the studies that form the basis of their benefits estimate, or the likely bias as a result." *Id.* at 13.
  - The willingness to pay estimates relating to perceived benefits are derived from outdated and inaccurate studies. See *id.*
  - Because of the numerous issues outlined above with ADEQ's reliance on the EPA and Corps 2021 Economic Analysis, AMA is concerned with ADEQ's use of a benefit transfer approach when calculating costs and benefits and whether this approach, at least as applied by ADEQ for surface waters in Arizona, appropriately calculates potential costs and benefits related to either designation waters as non-WOTUS protected surface waters or imposition of water quality standards on non-WOTUS waters. The selection of the cost and benefit categories or inputs will drive the usefulness of this approach.

We disagree with many of the cost and benefit inputs used in McClure's second report (including in the table found at 28 A.A.R. at 2345) especially as applied to a cost/benefit analysis for determining whether to impose certain water quality standards on non-WOTUS protected surface waters.

**Comment 4: Conservation Group** - I have read ADEQ's document packet - Environmental , Social, and Economic Cost/Benefit Analysis. I certainly appreciate the complex nature of the task to assign costs and benefits to determine the selection and importance of waters to be included for protection.

*As the analysis provided by ADEQ and consultants in the documents reported, assigning costs is a much more straightforward task than determining benefits. This is especially true for waters that have perhaps a less clear determination of their value, or are appreciated by consumers or state residents in a way that defies current best attempts at estimating that value.*

*I understand the attempt to utilize the three scenarios in the document as a way to explain the range of possible cost/benefit analyses that could be accomplished with the tools that ADEQ is considering. However, the use of these particular scenarios and the analyses of the benefits provided in the examples gave cause for concern.*

*It is critical that all waters are valued for their important characteristics, many of which may not be adequately measured by the tools that you are considering. Some examples that are perhaps more likely to be erroneously valued are:*

- *waters that are home to, or provide habitat used by endangered or threatened species*
- *waters that are valued by anglers because they hold populations of wild, introduced trout (brown, rainbow, and brook trout) that are a rare commodity in Arizona due to the limited cold water habitat in our state*
- *waters that provide protection, and current or eventual catch and release fishing opportunity for recovery populations of native Gila or Apache trout.*

*A point of concern in your evaluation of waters related to fishing is whether the act of fishing is intended to result in consumption of the fish. While many of the waters on the ADEQ list fit that criteria, there are many more that do not. These waters are designated as catch and release waters by Arizona Game and Fish Department (AZGFD), and are of incredible value to the state.*

*Gila trout and our state fish, Apache trout, provide a useful example to our assertion. Both of these native trout were once listed as endangered in Arizona. Apache trout were downlisted to threatened in 1975, and Gila trout were downlisted in 2006 due to an incredible amount of work and investment by several agencies and organizations including: AZGFD, United States Forest Service (USFS), United States Fish and Wildlife Service (USFWS), the White Mountain Apache Tribe, and Trout Unlimited (TU). If the water quality where these recovery populations reside is not maintained, and that contributes to these fish being returned to their endangered status, then these agencies and organizations will incur tremendous cost to bring them back from that designation.*

*There is an economic driver component for protecting these fish that may not be accounted for in the Department's analysis as well. These native, threatened trout in the AZGFD identified recovery streams are highly sought by anglers, fly fishers in particular, who will travel great distances to catch and release these rare and beautiful trout.*

*Native Gila and Apache trout are valued by anglers across the state, as well as anglers from across the country and the world who are already coming to the recovery waters that have been opened to catch and release fishing in order to add these special trout to their catch list. AZGFD has a wild trout challenge that*

*anglers from across the country participate in. It is unclear if the economic benefit to the state as a result of anglers traveling to Arizona and the purchases they make (fishing license, fishing equipment, plane fare, rental cars, lodging, meals, etc.) is adequately calculated in your cost/benefit tools. This becomes further complicated by the fact that as AZGFD works to improve these identified recovery streams for Gila and Apache trout, that it sometimes takes several years for the populations to grow and stabilize to the point that catch and release fishing can occur on these streams.*

*There is another element of protecting these waters that are home to these native and wild trout and other protected species, that may not be adequately included in the calculations that we want to address. Many residents value these waters because they provide habitat for species that these residents do not want to see vanish from Arizona. That puts an additional premium on the quality of the water that is maintained in these streams. Your document notes incremental vs absolute attention to the water quality of a protected stream or lake. Absolute water quality is critical to these streams.*

*The value of maintaining the highest quality water possible is important to another concern that we have. There is the exponential cost to deal with these protected waters, after the fact, if they are spoiled. The Four Forest Restoration Initiative (4FRI) provides an example to what we mean. We have seen the devastation caused in our state by the ever increasing threat of wildfires. In the case of 4FRI, this footprint includes watersheds that are home to many of the trout streams that we feel are important to protect. It also supplies water to Rim Country communities, and is an extremely important water source for the Phoenix Metro area. Consider the minimal preventive costs of maintaining the quality of these protected waters to that of the treatment costs of severely tainted water before it can be used by people downstream. Add to that the restoration costs to the watershed if an important water source for millions is damaged. We are not sure that the Department's tools provide for this aspect of cost/benefit analysis.*

*We ask that ADEQ expand their search for tools that better capture the inherent value of Nature to a greater degree than the tools that Department has considered to this point. We offer this link to the*

*Intergovernmental Science-Policy platform on Biodiversity and Ecosystem Services (IPBES) "Assessment Report on the Diverse Values and Valuation of Nature": [https://ipbes.net/media\\_release/Values\\_Assessment\\_Published#:~:text=%E2%80%9CNature%20is%20what%20sustains%20us,left%20out%20of%20decision%20making](https://ipbes.net/media_release/Values_Assessment_Published#:~:text=%E2%80%9CNature%20is%20what%20sustains%20us,left%20out%20of%20decision%20making) as a possible source that the Department might want to explore. In addition to a review of this tool by ADEQ, we hope that a more thorough review by ADEQ of other possible tools to better capture the value of the kinds of waters we have highlighted will occur and result in strategies to better assess the true benefits of these valued waters.*

**ADEQ Answer** - The regulations adopted in this rulemaking accomplish two ESE analysis-related statutory requirements. First, the ESE analysis considers the water quality standards adopted by ADEQ, then applies those water quality standards to certain waters to ensure that the benefits of protecting any listed waters outweigh the cost of protecting those waters. Second, this rulemaking establishes a procedure for determining economic, social, and environmental cost/benefits in any future SWPP rulemaking.

The regulations adopted by ADEQ in this rulemaking at R18-2-213 are put in place to provide regulatory guardrails to any future SWPP rulemakings. These guidelines are a recognition that a rulemaking done pursuant to the existing statutory authority could take many forms. Potentially, future rulemaking could add or remove

waters from the PSWL without modifying water quality standards. The opposite is also true, ADEQ could modify water quality standards for non-WOTUS protected surface waters without modifying what waters are protected. The important part of the process is that the ESE valuation process must be tailored to the rulemaking that ADEQ is looking to accomplish.

The idea of a tailored economic analysis is extremely important in the context of this initial SWPP rulemaking. ADEQ performed two ESE analyses with the help of our contracted economists to ensure the requirements of the statute were met. As mentioned earlier in this preamble, one of the issues with the first analysis ADEQ completed is that it lacked specificity with regards to the variables that were being applied. To state that in another way, in a vacuum it's impossible to determine costs or benefits without applying the analysis in some specific way.

ADEQ's second ESE analysis addresses that deficiency and quantifies a set of standards that are protective of non-WOTUS protected surface waters without being overly burdensome. The cost of adopting these standards depends on the nature and type of discharge to the protected water body. At the time of this rulemaking, there are no permits currently issued for any discharges to non-wotus waters on the protected surface waters list. As applied, the only entity that will bear costs associated with the adopted standards is ADEQ for the purposes of water quality sampling and administration.

In the event that there is a permitted discharge to a non-WOTUS protected surface water, ADEQ has adopted water quality standards that could affect both the costs and benefits of the regulations in this NFRM. The mixing zones standards in R18-11-207, the natural background standards in R18-11-207, the schedule of compliance standard in R18-11-208, the variance standard in R18-11-209, and the site-specific standard rule in R18-11-210 are all water quality standards adopted in this rulemaking that could affect the enforceable limit of any permit issued under the new SWPP.

The hypothetical nature of any of the costs/benefits included in ADEQ's model are extremely important to consider because as adopted, there is no ascertainable costs/benefits that the agency can assign to the SWPP because there simply is not a permit that will be issued pursuant to it after adoption. ADEQ rulemaking requirements included establishing criteria for the economic, social and environmental costs and benefits for listing or delisting waters for state-level protection, and for setting standards for non-WOTUS and other waters of the state. Accordingly, the consulting team focused on variables pertaining to modeling the economic costs and benefits associated with decisions for adopting water quality standards for non-WOTUS waters and other waters of the state, and for listing or delisting waters for protection within a new Surface Water Protection Program as well as a parallel consideration in recognizing, at least a qualitative sense, the social effects associated with waterbody actions.

Pursuant to ADEQ's direction, the Consultants used a national study which analyzed economic effects of applying a surface water protection program, as a general framework for the Arizona-specific model. The

national study includes both national and state-level costs as well as estimates for benefits, along with a proposed framework for evaluating benefits at smaller levels of geography. Ultimately, the ADEQ model used in this rulemaking generally reflects the scope, methodology and data sources used in the national study, but the consultants adapted and supplemented the framework to address the policy actions that are most likely to occur in Arizona.

This approach is consistent with the requirements of the statute, and simultaneously gave ADEQ the specific type of analysis necessary to protect the listed waters, as well as a way to quantify the potential costs and benefits of the standards the agency is adopting. ADEQ released the consultants report to the public in May of this year for comment, and received no written comments on the material until publication of the NPRM. ADEQ has a statutory deadline of December 31st, 2022 to adopt the rules in this NFRM.

ADEQ appreciates the comments submitted on our ESE analysis, especially the reports that help quantify the costs and benefits of a potential surface water protection program in Arizona. The agency has cataloged these submitted studies for use in any future SWPP rulemaking.

Commenters also suggested additional costs or benefits categories that could be included in future rulemakings. These variables included environmental justice considerations, cultural impacts, prospective costs that could potentially be incurred if a water was determined to be impaired, benefits associated with the preservation of endangered species, and benefits associated with ecosystem services. ADEQ has noted these comments and will explore expanding our ESE analysis in any future rulemaking.

Each SWPP rulemaking is unique, and ADEQ encourages stakeholders to continue to engage on the topic of developing an appropriate ESE analysis for each individual iteration of this program. Variables that are determinative in one analysis may not be included in another. The rules adopted by ADEQ to provide regulatory guardrails in future SWPP rulemakings ensure that a public process relevant to the specific rule is provided by the agency whenever water quality standards are modified or waters are added or removed from the PSWL.

### **Typographical Errors**

**ADEQ Response** - ADEQ has addressed typographical errors pointed out by commenters in this NFRM. These changes are outlined in the modifications section of the NFRM.

### **Protection for Non-WOTUS Ephemeral Streams**

Through the rulemaking process, ADEQ has received multiple comments regarding the protection of ephemeral streams under the state program. The enabling legislation for the SWPP prevents ADEQ from adding those waters as non-WOTUS protected surface waters.

### **Request for the Addition or Removal of Certain Waters**

During the rulemaking process, ADEQ received comments from a number of parties asking to either add or remove waters from the Protected Surface Waters List.

ADEQ received requests to list the following waters, or portions of the following waters, on the Protected Surface Waters List:

- Benny Creek (LC)
- Benton Creek (LC)
- Grapevine Creek (Agua Fria drainage/MG)
- Soldier Creek - Black River (SR)
- Hayground Creek (SR)
- McKittrick Creek (UG)

ADEQ received requests to remove the following waters, or portions of the following waters, from the Protected Surface Waters List:

- Alvord Park Lake
- Cortez Park Lake
- Encanto Park Lake
- Garden Canyon Creek
- Mineral Creek
- Whitewater Draw
- Queen Creek

ADEQ uses a methodology documented across two technical papers to add or remove waters from the PSWL. The technical paper describing the process to add waters to the PSWL can be accessed here: [https://static.azdeq.gov/wqd/swpp/pswl\\_wp.pdf](https://static.azdeq.gov/wqd/swpp/pswl_wp.pdf). The technical paper that describes the WOTUS evaluation process can be accessed here: [https://static.azdeq.gov/wqd/swpp/sig\\_nex\\_tp.pdf](https://static.azdeq.gov/wqd/swpp/sig_nex_tp.pdf).

For those waters that were nominated for listing on the PSWL, WOTUS evaluations are ongoing to determine jurisdictional status. For waters that were requested to be removed, ADEQ removed Alvord Park Lake, Cortez Park Lake and Encanto Park Lake from the PSWL. These are non-WOTUS ornamental and urban lakes, which require confirmation from the lake owner for listing. The lake owner requested removal during the NPRM comment period. Garden Canyon Creek, Mineral Creek, Whitewater Draw and Queen Creek are currently listed on Appendix B and are waters listed in Table C. These waters need further evaluation to determine jurisdictional status.

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

None.

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

ADEQ's regulations do allow for general permits for many different types of facilities, but not all facilities qualify for general permits. In the case that a general permit does not apply this rule may require that entities that discharge to non-WOTUS protected surface water apply for an individual AZPDES permit. Requirements for discharge vary depending on the facility, so many of these discharges would not be able to receive coverage under a general permit.

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

The Clean Water Act and implementing regulations adopted by EPA apply to the subject of this rule, as described in Section 5 above. Article 2 of this rulemaking establishes water quality standards that are applicable to surface waters that are not protected under the Clean Water Act. These standards are not more stringent than those the standards implemented by federal law, but they apply to waters that may not be protected under federal law.

ADEQ was given explicit statutory authority to develop a program to protect these surface waters by HB2691(2021). That bill is codified at A.R.S. §§ 49-202.01, 49-221, 49-255.04, and 49-255.05.

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

No such analysis was submitted.

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

None.

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

**changed between the emergency and the final rulemaking packages:**

**15. The full text of the rules follows:**

**CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY – WATER QUALITY STANDARDS**

**ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS**

Section

- R18-11-101. Definitions
- Appendix A. Numeric Water Quality Standards
  - Table 1. Water Quality Criteria By Designated Use
- Appendix B. Surface Waters and Designated Uses

**ARTICLE 2. REPEALED WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS**

Section

- R18-11-201. ~~Repealed~~ Definitions
- R18-11-202. ~~Repealed~~ Applicability
- R18-11-203. ~~Repealed~~ Designated Uses for Non-WOTUS Protected Surface Waters
- R18-11-204. ~~Repealed~~ Interim, Presumptive Designated Uses
- R18-11-205. ~~Repealed~~ Analytical Methods
- R18-11-206. ~~Repealed~~ Mixing Zones
- R18-11-207. ~~Repealed~~ Natural Background
- R18-11-208. ~~Repealed~~ Schedules of Compliance
- R18-11-209. ~~Repealed~~ Variances
- R18-11-210. ~~Repealed~~ Site Specific Standards
- R18-11-211. ~~Repealed~~ Enforcement of Non-permitted Discharges to Non-WOTUS Protected Surface Waters
- R18-11-212. ~~Repealed~~ Statements of Intent and Limitations on the Reach of Article 2
- R18-11-213. ~~Repealed~~ Procedures for Determining Economic, Social, and Environmental Cost and Benefits
- R18-11-214. ~~Repealed~~ Narrative Water Quality Standards for Non-WOTUS Protected Surface Waters
- R18-11-215. Numeric Water Quality Standards for Non-WOTUS Protected Surface Waters

- Table 1. Water Quality Criteria By Designated Use
- Table 2. Acute Water Quality Standards for Dissolved Cadmium
- Table 3. Chronic Water Quality Standards for Dissolved Cadmium
- Table 4. Water Quality Standards for Dissolved Chromium III
- Table 5. Water Quality Standards for Dissolved Copper
- Table 6. Water Quality Standards for Dissolved Lead
- Table 7. Water Quality Standards for Dissolved Nickel
- Table 8. Water Quality Standards for Dissolved Silver
- Table 9. Water Quality Standards for Dissolved Zinc
- Table 10. Water Quality Standards for Pentachlorophenol
- Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Present
- Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife warmwater, Unionid Mussels Present
- Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater and warmwater, Unionid Mussels Present
- Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Absent
- Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent
- Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent
- Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Absent
- R18-11-216. The Protected Surface Waters List
- Table A. Non-WOTUS Protected Surface Waters and Designated Uses
- Table B. WOTUS Protected Surface Waters
- Table C. Historically Regulated as WOTUS and in Need of Further Study
- R18-11-217. Best Management Practices for Non-WOTUS Protected Surface Waters

## **ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS**

### **R18-11-101. Definitions**

The following terms apply to this Article:

1. “Acute toxicity” means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. “Agricultural irrigation (AgI)” means the use of a surface water for crop irrigation.
3. “Agricultural livestock watering (AgL)” means the use of a surface water as a water supply for consumption by livestock.
4. “Annual mean” is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. “Aquatic and wildlife (cold water) (A&Wc)” means the use of a surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. “Aquatic and wildlife (effluent-dependent water) (A&Wedw)” means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. “Aquatic and wildlife (ephemeral) (A&We)” means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. “Aquatic and wildlife (warm water) (A&Ww)” means the use of a surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. “Arizona Pollutant Discharge Elimination System (AZPDES)” means the point source discharge permitting program established under 18 A.A.C. 9, Article 9.
10. “Assimilative capacity” means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
11. “Clean Water Act” means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. “Complete Mixing” means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
13. “Criteria” means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
14. “Critical flow conditions of the discharge” means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone’s receiving water as follows:
  - a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
  - b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
  - c. For human health based water quality standard criteria, the discharge flow critical condition is the long-term arithmetic mean flow, averaged over several years so as to simulate long-term exposure.

15. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
  - a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
  - b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
  - c. For human health based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
16. "Deep lake" means a lake or reservoir with an average depth of more than 6 meters.
17. "Designated use" means a use specified in Appendix B of this Article for a surface water.
18. "Domestic water source (DWS)" means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
19. "Effluent-dependent water (EDW)" means a surface water or portion of a surface water, classified under R18-11-113 that consists of a point source discharge of wastewater without which the surface water would be ephemeral. An effluent dependent water is a surface water that, without the point source discharge of wastewater, would be an ephemeral water. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.
20. "Ephemeral water" means a surface water ~~that has a channel that is at all times above the water table and~~ or portion of surface water that flows or pools only in direct response to precipitation.
21. "Existing use" means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.
22. "Fish consumption (FC)" means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
23. "Full-body contact (FBC)" means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
24. "Geometric mean" means the nth root of the product of n items or values. The geometric mean is calculated using the following formula:
 
$$GM_y = \sqrt[n]{(Y_1)(Y_2)(Y_3)(Y_n)}$$
25. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO<sub>3</sub>) in milligrams per liter.
26. "Igneous lake" means a lake located in volcanic, basaltic, or granite geology and soils.

27. "Intermittent water" means a ~~stream or reach~~ surface water or portion of surface water that flows continuously ~~only at~~ during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or from another surface source, such as melting snow or snowpack.
28. "Mixing zone" means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
29. "Oil" means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
30. "Outstanding Arizona water (OAW)" means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
31. "Partial-body contact (PBC)" means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
32. "Perennial water" means a surface water or portion of surface water that flows continuously throughout the year.
33. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. A.R.S § 49-201(29)
34. "Pollutant Minimization Program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.
35. "Practical quantitation limit" means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
36. "Reference condition" means a set of abiotic physical stream habitat, water quality, and site selection criteria established by the Director that describe the typical characteristics of stream sites in a region that are least disturbed by environmental stressors. Reference biological assemblages of macroinvertebrates and algae are collected from these reference condition streams for calculating the Ari-zona Indexes of Biological Integrity thresholds.
37. "Regional Administrator" means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
38. "Regulated discharge" means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.
39. "Riffle habitat" means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.

40. "Run habitat" means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
41. "Sedimentary lake" means a lake or reservoir in sedimentary or karst geology and soils.
42. "Shallow lake" means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
43. "Significant degradation" means:
  - a. The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
  - b. Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
44. "Surface water" means ~~"Navigable waters"~~ "WOTUS" as defined in A.R.S. ~~§ 49-201(22)~~ § 49-201(53).
45. "Total nitrogen" means the sum of the concentrations of ammonia (NH<sub>3</sub>), ammonium ion (NH<sub>4</sub><sup>+</sup>), nitrite (NO<sub>2</sub>), and nitrate (NO<sub>3</sub>), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
46. "Total phosphorus" means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
47. "Toxic" means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
48. "Urban lake" means a manmade lake within an urban landscape.
49. "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.
50. "Variance" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the variance.
51. "Wadable" means a surface water can be safely crossed on foot and sampled without a boat.
52. "Wastewater" does not mean:
  - a. Stormwater,
  - b. Discharges authorized under the De Minimus General Permit,
  - c. Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or
  - d. Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
53. "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.

54. "Zone of initial dilution" means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

## Appendix A

**Table 1. Water Quality Criteria By Designated Use (see f)**

Parameter	CAS NUMBER	DWS (µg/L)	FC (µg/L)	FBC (µg/L)	PBC (µg/L)	A&Wc Acute (µg/L)	A&Wc Chronic (µg/L)	A&Ww Acute (µg/L)	A&Ww Chronic (µg/L)	A&Wedw Acute (µg/L)	A&Wedw Chronic (µg/L)	A&We Acute (µg/L)	AgI (µg/L)	AgL (µg/L)
Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550	850	550			
Acenaphthylene	<del>208968</del>	420		<del>56,000</del>	<del>56,000</del>									
Acrolein	107028	3.5	1.9	467	467	3	3	3	3	3	3			
Acrylonitrile	107131	<del>0.006-0.06</del>	0.2	<del>9.3</del>	37,333	3,800	250	3,800	250	3,800	250			
Alachlor	15972608	2		9,333	9,333	2,500	170	2,500	170	2,500	170			
Aldrin	309002	0.002	0.00005	<del>0.27-0.08</del>	28	3		3		3		4.5	0.003	See (b)
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)												
Ammonia	7664417					See (e) & Tables 11 (present) & 14 (absent)	See (e) & Tables 13 (present) & 17 (absent)	See (e) & Tables 12 (present) & 15 (absent)	See (e) & Tables 13 (present) & 16 (absent)	See (e) & Table 15 (absent)	See (e) & Table 16 (absent)			
Anthracene	120127	2,100	74	280,000	280,000									
Antimony	7440360	6 T	640 T	747 T	747 T	88 D	30 D	88 D	30 D	1,000 D	600 D			
Arsenic	7440382	10 T	80 T	30 T	280 T	340 D	150 D	340 D	150 D	340 D	150 D	440 D	2,000 T	200 T
Asbestos	1332214	See (a)												
Atrazine	1912249	3		32,667	32,667									
Barium	7440393	2,000 T		<del>186,667 T</del> <del>98,000 T</del>	<del>186,667 T</del> <del>98,000 T</del>									
Benz(a)anthracene	56553	0.005	0.02	<del>47-0.2</del>	<del>280-0.2</del>									
Benzene	71432	5	<del>144-140</del>	<del>433-93</del>	3,733	2,700	180	2,700	180	8,800	560			
Benzo(b)fluoranthene Benzofluoranthene	205992	0.005	0.02	<del>47-1.9</del>	<del>280-1.9</del>									
Benzidine	92875	0.0002	0.0002	<del>0.02-0.01</del>	2,800	1,300	89	1,300	89	1,300	89	10,000	0.01	0.01
Benzo(a)pyrene	50328	0.2	<del>0.1-0.02</del>	<del>47-0.2</del>	<del>280-0.2</del>									
Benzo(k)fluoranthene	207089	0.005	0.02	<del>47-1.9</del>	<del>280-1.9</del>									
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T	65 D	5.3 D	65 D	5.3 D	65 D	5.3 D			
Beta particles and photon emitters		4 millirems /year See (i)												
Bis(2-chloroethoxy)methane	111914	21		2,800	2,800									
Bis(2-chloroethyl) ether	111444	0.03	0.5	4-1	4-1	120,000	6,700	120,000	6,700	120,000	6,700			

Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333										
Bis(chloromethyl) ether	<del>642884</del>	<del>0.00045</del>		<del>0.02</del>											
Boron	7440428	1,400 T		186,667 T	186,667 T									1,000 T	
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667										
4-Bromophenyl phenyl ether	101553					180	14	180	14	180	14				
Bromoform	75252	TTHM See (g)	133	<del>594</del> 180	18,667	15,000	10,000	15,000	10,000	15,000	10,000				
Bromomethane	74839	9.8	299	1,307	1,307	5,500	360	5,500	360	5,500	360				
Butyl benzyl phthalate	85687	1,400	386	186,667	186,667	1,700	130	1,700	130	1,700	130				
Cadmium	7440439	5 T	<del>6 T</del> 84 T	<del>467 T</del> 700 I	<del>467 T</del> 700 I	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	50	50
Carbaryl	63252					2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1		
Carbofuran	1563662	40		4,667	4,667	650	50	650	50	650	50				
Carbon tetrachloride	56235	5	<del>3</del> 2	<del>67</del> 11	<del>3,733</del> 980	18,000	1,100	18,000	1,100	18,000	1,100				
Chlordane	57749	2	0.0008	<del>43</del> 4	467	2.4	0.004	2.4	0.2	2.4	0.2	3.2			
Chlorine (total residual)	7782505	4,000		<del>93,333</del> 4000	<del>93,333</del> 4000	19	11	19	11	19	11				
Chlorobenzene	108907	100	1,553	18,667	18,667	3,800	260	3,800	260	3,800	260				
Chloroethane	<del>75093</del>	<del>280</del>		<del>93,333</del>	<del>93,333</del>										
2-Chloroethyl vinyl ether	110758					180,000	9,800	180,000	9,800	180,000	9,800				
Chloroform	67663	TTHM See (g)	<del>2,433</del> 470	<del>9,333</del> 230	9,333	14,000	900	14,000	900	14,000	900				
p-Chloro-m-cresol	59507					15	4.7	15	4.7	15	4.7	48,000			
Chloromethane	74873					270,000	15,000	270,000	15,000	270,000	15,000				
beta-Chloronaphthalene	91587	<del>2240</del> 560	<del>4267</del> 317	<del>298,667</del> 74,667	<del>298,667</del> 74,667										
2-Chlorophenol	95578	35	30	4,667	4,667	2,200	150	2,200	150	2,200	150				
Chloropyrifos	2921882	21		2,800	2,800	0.08	0.04	0.08	0.04	0.08	0.04				
Chromium III	16065831	<del>40,500</del>	75,000 T	1,400,000 T	1,400,000 T	See (d) & Table 4									
Chromium VI	18540299	21 T	150 T	2,800 T	2,800 T	16 D	11 D	16 D	11 D	16 D	11 D	34 D			
Chromium (Total)	7440473	100 T												1,000	1,000
Chrysene	218019	0.005	0.02	<del>0.6</del> 19	<del>0.6</del> 19										
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	5,000 T	500 T							
Cyanide (as free cyanide)	57125	200 T	<del>504 T</del> 16,000 T	<del>588 T</del> 18,667 T	<del>588 T</del> 18,667 T	22 T	5.2 T	41 T	9.7 T	41 T	9.7 T	84 T			200 T
Dalapon	75990	200	8,000	28,000	28,000										
DDT and its breakdown products	50293	0.1	<del>0.0003</del> 0.0002	<del>44</del> 4	467	1.1	0.001	1.1	0.001	1.1	0.001	1.1	0.001	0.001	0.001
Demeton	8065483						0.1		0.1		0.1				
Diazinon	333415					0.17	0.17	0.17	0.17	0.17	0.17	0.17			
Dibenz (ah) anthracene	53703	<del>0.350</del> 0.005	0.02	<del>47.0</del> 1.9	<del>280.0</del> 1.9										
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18,667										
1,2-Dibromo-3-chloropropane	96128	0.2		2,800	2,800										

1,2-Dibromoethane	106934	0.02	0.05		<del>2 8,400</del>	8,400										
Dibutyl phthalate	84742	700	899	93,333	93,333	470	35	470	35	470	35	1,100				
1,2-Dichlorobenzene	95501	600	205	84,000	84,000	790	300	1,200	470	1,200	470	5,900				
1,3-Dichlorobenzene	541731					2,500	970	2,500	970	2,500	970					
1,4-Dichlorobenzene	106467	75	5755	373,333	<del>373,333</del> <del>373,333</del>	560	210	2,000	780	2,000	780	6,500				
3,3'-Dichlorobenzidine	91941	0.08	0.03	<del>40 3</del>	<del>40 3</del>											
1,2-Dichloroethane	107062	5	37	15	186,667	59,000	41,000	59,000	41,000	59,000	41,000					
1,1-Dichloroethylene	75354	7	7,143	46,667	46,667	15,000	950	15,000	950	15,000	950					
1,2-cis-Dichloroethylene	156592	70		<del>1,867 70</del>	<del>1,867 70</del>											
1,2-trans-Dichloroethylene	156605	100	10,127	18,667	18,667	68,000	3,900	68,000	3,900	68,000	3,900					
Dichloromethane	75092	5	<del>2,222 593</del>	<del>2,333 190</del>	<del>5,600</del> <del>56,000</del>	97,000	5,500	97,000	5,500	97,000	5,500					
2,4-Dichlorophenol	120832	21	59	2,800	2,800	1,000	88	1,000	88	1,000	88					
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9,333	9,333											
1,2-Dichloropropane	78875	5	17,518	84,000	84,000	26,000	9,200	26,000	9,200	26,000	9,200					
1,3-Dichloropropene	542756	0.7	42	<del>93 420</del>	28,000	3,000	1,100	3,000	1,100	3,000	1,100					
Dieldrin	60571	0.002	0.00005	<del>0.3 0.09</del>	47	0.2	0.06	0.2	0.06	0.2	0.06	4	0.003	See (b)		
Diethyl phthalate	84662	5,600	8,767	746,667	746,667	26,000	1,600	26,000	1,600	26,000	1,600					
Di (2-ethylhexyl) adipate	103231	400		<del>3,889</del> <del>560,000</del>	560,000											
Di (2-ethylhexyl) phthalate	117817	6	3	<del>333 100</del>	18,667	400	360	400	360	400	360	3,100				
2,4-Dimethylphenol	105679	140	171	18,667	18,667	1,000	310	1,000	310	1,000	310	150,000				
Dimethyl phthalate	131113					17,000	1,000	17,000	1,000	17,000	1,000					
4,6-Dinitro-o-cresol	534521	<del>0.6 28</del>	<del>42 582</del>	<del>75 3,733</del>	<del>75 3,733</del>	310	24	310	24	310	24					
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867	110	9.2	110	9.2	110	9.2					
2,4-Dinitrotoluene	121142	14	421	1,867	1,867	14,000	860	14,000	860	14,000	860					
2,6-Dinitrotoluene	606202	0.05		<del>7 2</del>	<del>280 3,733</del>											
Di-n-octyl phthalate	117840	<del>70 2,800</del>		<del>9,333</del> <del>373,333</del>	<del>9,333</del> <del>373,333</del>											
Dinoseb	88857	7	42	933	933											
1,2-Diphenylhydrazine	122667	0.04	0.2	<del>6 1.8</del>	<del>6 1.8</del>	130	11	130	11	130	11					
Diquat	85007	20	476	2,053	2,053											
Endosulfan sulfate	1031078	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3				
Endosulfan (Total)	115297	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3				
Endothall	145733	100	<del>46,000</del>	18,667	18,667											
Endrin	72208	2	0.06	<del>1,120 280</del>	<del>1,120 280</del>	0.09	0.04	0.09	0.04	0.09	0.04	0.7	0.004	0.004		
Endrin aldehyde	<del>7421933</del> <del>7421934</del>	2	0.06	<del>1,120</del>	<del>1,120</del>	0.09	0.04	0.09	0.04	0.09	0.04	0.7				
Ethylbenzene	100414	700	2,133	93,333	93,333	23,000	1,400	23,000	1,400	23,000	1,400					
Fluoranthene	206440	280	28	37,333	37,333	2,000	1,600	2,000	1,600	2,000	1,600					
Fluorene	86737	280	1,067	37,333	37,333											
Fluoride	7782414	4,000		140,000	140,000											

Glyphosate	1071836	700	266,667	93,333	93,333									
Guthion	86500	24	92	<del>2,800</del>	<del>2,800</del>		0.01		0.01		0.01			
Heptachlor	76448	0.4	0.00008	<del>4 0.4</del>	467	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Heptachlor epoxide	1024573	0.2	0.00004	<del>0.5 0.2</del>	12	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Hexachlorobenzene	118741	1	0.0003	<del>3 1</del>	747	6	3.7	6	3.7	6	3.7			
Hexachlorobutadiene	87683	0.4	18	<del>60 18</del>	187	45	8.2	45	8.2	45	8.2			
Hexachlorocyclohexane alpha	319846	0.006	0.005	<del>0.7 0.22</del>	7,467	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane beta	319857	0.02	0.02	<del>3 0.78</del>	560	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane delta	319868					1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane gamma (lindane)	58899	0.2	<del>5 1.8</del>	<del>700 280</del>	<del>700 280</del>	1	0.08	1	0.28	1	0.61	11		
Hexachlorocyclopentadiene	77474	50	<del>74 580</del>	<del>44,200 9,800</del>	<del>44,200 9,800</del>	3.5	0.3	3.5	0.3	3.5	0.3			
Hexachloroethane	67721	<del>0.9 2.5</del>	<del>4 3.3</del>	<del>447 100</del>	<del>653 933</del>	490	350	490	350	490	350	850		
Hydrogen sulfide	7783064						2 See (c)		2 See (c)		2 See (c)			
Indeno (1,2,3-cd) pyrene	193395	<del>0.4 0.05</del>	<del>4 0.49</del>	<del>47 1.9</del>	<del>47 1.9</del>									
Iron	7439896						1,000 D		1,000 D		1,000 D			
Isophorone	78591	37	961	<del>4,942 1,500</del>	186,667	59,000	43,000	59,000	43,000	59,000	43,000			
Lead	<del>7439974 7439921</del>	15 T		15 T	15 T	See (d) & Table 6	10,000 T	100 T						
Malathion	121755	140	<del>4,455</del>	18,667	18,667		0.1		0.1		0.1			
Manganese	7439965	980		130,667	130,667								10,000	
Mercury	7439976	2 T		280 T	280 T	2.4 D	0.01 D	2.4 D	0.01 D	2.4 D	0.01 D	5 D		10 T
Methoxychlor	72435	40		<del>48,667 4,667</del>	<del>48,667 4,667</del>		0.03		0.03		0.03			
Methylmercury	22967926		0.3 mg/ kg											
Mirex	2385855	1	<del>0.0002</del>	<del>0.26 187</del>	187		0.001		0.001		0.001			
Naphthalene	91203	140	1,524	18,667	18,667	1,100	210	3,200	580	3,200	580			
Nickel	7440020	<del>240 T 140 T</del>	<del>511 T 4,600 T</del>	28,000 T	28,000 T	See (d) & Table 7								
Nitrate	14797558	10,000		3,733,333	3,733,333									
Nitrite	14797650	1,000		233,333	233,333									
Nitrate + Nitrite		10,000												
Nitrobenzene	98953	<del>44 3.5</del>	<del>554 138</del>	<del>4,867 467</del>	<del>4,867 467</del>	1,300	850	1,300	850	1,300	850			
p-Nitrophenol	100027					4,100	3,000	4,100	3,000	4,100	3,000			
Nitrosodibutylamine	924463	0.006	0.2	0.9										
Nitrosodiethylamine	55485	0.0002	0.4	0.03										
N-nitrosodimethylamine	62759	0.001	3	<del>0.09 0.03</del>	<del>0.09 0.03</del>									
N-Nitrosodiphenylamine	86306	7.1	6	<del>952 290</del>	<del>952 290</del>	2,900	200	2,900	200	2,900	200			
N-nitrosodi-n-propylamine	621647	0.005	0.5	<del>0.7 0.2</del>	<del>0.7 88,667</del>									
N-nitrosopyrrolidine	930552	0.02	34	2										
Nonylphenol	104405					28	6.6	28	6.6	28	6.6	28		

Oxamyl	23135220	200	<del>6452</del>	23,333	23,333									
Parathion	56382	42	46	<del>5,600</del>	<del>5,600</del>	0.07	0.01	0.07	0.01	0.07	0.01			
Pentachlorobenzene	608935	6		<del>747</del>	<del>747</del>									
Paraquat	1910425	32	<del>12,000</del>	4,200	4,200	100	54	100	54	100	54			
Pentachlorophenol	87865	1	<del>144,1000</del>	12	<del>4,667</del> <del>28,000</del>	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10		
Permethrin	52645531	350	<del>77</del>	46,667	46,667	0.3	0.2	0.3	0.2	0.3	0.2			
Phenanthrene	85018					30	6.3	30	6.3	30	6.3			
Phenol	108952	2,100	37	280,000	280,000	5,100	730	7,000	1,000	7,000	1,000	180,000		
Picloram	1918021	500	<del>1,806</del> <del>2,710</del>	65,333	65,333									
Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	<del>2.19</del>	19	2	0.01	2	0.02	2	0.02	11	0.001	0.001
Pyrene	129000	210	800	28,000	28,000									
Radium 226 + Radium 228		5 pCi/L												
Selenium	7782492	50 T	667 T	4,667 T	4,667 T		2 T		2 T		2 T	33 T	20 T	50 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T	See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		
Simazine	112349	4		4,667	4,667									
Strontium	7440246	8 pCi/L												
Styrene	100425	100		186,667	186,667	5,600	370	5,600	370	5,600	370			
Sulfides												100		
4,2,4,5-Tetrachlorobenzene	95943	2,4		<del>280</del>	<del>280</del>									
2,3,7,8-Tetrachlorod-ibenzo- p-dioxin (2,3,7,8- TCDD)	1746016	0.00003	<del>0.0000004</del> <del>5x10-9</del>	<del>0.0007</del> <del>0.00003</del>	<del>0.0007</del> <del>0.0009</del>	0.01	0.005	0.01	0.005	0.01	0.005	0.1		
1,1,2,2-Tetrachloroethane	79345	0.2	<del>32,000.4</del>	<del>23.7</del>	<del>186,667</del> <del>56,000</del>	4,700	3,200	4,700	3,200	4,700	3,200			
Tetrachloroethylene	127184	5	<del>62.261</del>	<del>2,222</del> <del>9.333</del>	<del>5,600</del> <del>9.333</del>	2,600	280	6,500	680	6,500	680	15,000		
Thallium	7440280	2 T	<del>0.07 T</del> <del>7.2</del> <del>T</del>	<del>9 T</del> <del>75 T</del>	<del>9 T</del> <del>75 T</del>	700 D	150 D	700 D	150 D	700 D	150 D			
Toluene	108883	1,000	<del>11,063</del> <del>201,000</del>	<del>149,333</del> <del>280,000</del>	<del>149,333</del> <del>280,000</del>	8,700	180	8,700	180	8,700	180			
Toxaphene	8001352	3	0.0003	<del>4.1.3</del>	<del>4,867.933</del>	0.7	0.0002	0.7	0.0002	0.7	0.0002	11	0.005	0.005
Tributyltin	688733		<del>0.08</del>	<del>280</del>	<del>280</del>	0.5	0.07	0.5	0.07	0.5	0.07			
1,2,4-Trichlorobenzene	120821	70	70	9,333	9,333	750	130	1,700	300	1,700	300			
1,1,1-Trichloroethane	71556	200	<del>285,714</del> <del>428,571</del>	1,866,667	1,866,667	2,600	1,600	2,600	1,600	2,600	1,600	1,000		
1,1,2-Trichloroethane	79005	5	16	<del>82.25</del>	3,733	18,000	12,000	18,000	12,000	18,000	12,000			
Trichloroethylene	79016	5	<del>8.29</del>	<del>104</del> <del>280,000</del>	<del>467.280</del>	20,000	1,300	20,000	1,300	20,000	1,300			
2,4,5-Trichlorophenol	95954	700		<del>93.333</del>	<del>93.333</del>									
2,4,6-Trichlorophenol	88062	3.2	2	<del>424.130</del>	<del>424.130</del>	160	25	160	25	160	25	3,000		

2,4,5-Trichlorophenoxy propionic acid (2,4,5-TP)	93721	50		29,867 7,467	29,867 7,467									
Trihalomethanes (T)		80												
Tritium	10028178	20,000 pCi/L												
Uranium	7440611	30 D		2,800	2,800									
Vinyl chloride	75014	2	5	62	2,800									
Xylenes (T)	1330207	10,000		186,667	186,667									
Zinc	7440666	2,100 T	5,106 T	280,000 T	280,000 T	See (d) & Table 9	10,000 T	25,000 T						
2-nitrophenol	88755		No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data
1,1-dichloroethane	85343		No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data
4-chlorophenyl-phenyl ether	7005723		No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data
Benzo-(ghi)-perylene	191242		No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data	No-Data

#### Footnotes

- a. The asbestos standard is 7 million fibers (longer than 10 micrometers) per liter.
- b. The aldrin/dieldrin standard is exceeded when the sum of the two compounds exceeds 0.003 µg/L.
- c. In lakes, the acute criteria for hydrogen sulfide apply only to water samples taken from the epilimnion, or the upper layer of a lake or reservoir.
- d. Hardness, expressed as mg/L CaCO<sub>3</sub>, is determined according to the following criteria:
  - i. If the receiving water body has an A&Wc or A&Ww designated use, then hardness is based on the hardness of the receiving water body from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.
  - ii. If the receiving water has an A&Wedw or A&We designated use, then the hardness is based on the hardness of the effluent from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.
  - iii. The mathematical equations for the hardness-dependent parameter represent the water quality standards. Examples of criteria for the hardness-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- e. pH is determined according to the following criteria:
  - i. If the receiving water has an A&Wc or A&Ww designated use, then pH is based on the pH of the receiving water body from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
  - ii. If the receiving water body has an A&Wedw or A&We designated use, then the pH is based on the pH of the effluent from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
  - iii. The mathematical equations for ammonia represent the water quality standards. Examples of criteria for ammonia have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- f. Table 1 abbreviations.
  - i. µg/L = micrograms per liter,
  - ii. mg/kg = milligrams per kilogram,
  - iii. pCi/L = picocuries per liter,

- iv. D = dissolved,
- v. T = total recoverable,
- vi. TTHM indicates that the chemical is a trihalomethane.
- g. The total trihalomethane (TTHM) standard is exceeded when the sum of these four compounds exceeds 80 µg/L, as a rolling annual average.
- h. The concentration of gross alpha particle activity includes radium-226, but excludes radon and uranium.
- i. The average annual concentration of beta particle activity and photon emitters from manmade radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirems per year.
- j. The mathematical equations for the pH-dependent parameters represent the water quality standards. Examples of criteria for the pH-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- k. Abbreviations for the mathematical equations are as follows:
  - e = the base of the natural logarithm and is a mathematical constant equal to 2.71828
  - LN = is the natural logarithm
  - CMC = Criterion Maximum Concentration (acute)
  - CCC= Criterion Continuous Concentration (chronic)

## **Appendix B. Surface Waters and Designated Uses**

(Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Appendix B table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.)

### **Watersheds:**

BW = Bill Williams  
 CG = Colorado – Grand Canyon  
 CL = Colorado – Lower Gila  
 LC = Little Colorado  
 MG = Middle Gila  
 SC = Santa Cruz – Rio Magdalena – Rio Sonoyta  
 SP = San Pedro – Willcox Playa – Rio Yaqui  
 SR = Salt River  
 UG = Upper Gila  
 VR = Verde River

**Other Abbreviations:**

WWTP = Wastewater Treatment Plant

Km = kilometers

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wedw	FBC	PBC	DWS	FC	AgI	AgL
BW	Alamo Lake	34°14'06"/113°35'00"	Deep		A&Ww			FBC			FC		AgL
BW	Big Sandy River	Headwaters to Alamo Lake			A&Ww			FBC			FC		AgL
BW	Bill Williams River	Alamo Lake to confluence with Colorado River			A&Ww			FBC			FC		AgL
BW	Blue Tank	34°40'14"/112°58'17"			A&Ww			FBC			FC		AgL
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/113°03'37"		A&Wc				FBC			FC		AgL
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Carter Tank	34°52'27"/112°57'31"			A&Ww			FBC			FC		AgL
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/113°05'46"		A&Wc				FBC			FC		AgL
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Copper Basin Wash	Headwaters to confluence with unnamed tributary at 34°28'12"/112°35'33"		A&Wc				FBC			FC		AgL
BW	Copper Basin Wash	Below confluence with unnamed tributary to confluence with Skull Valley Wash				A&We			PBC				AgL
BW	Cottonwood Canyon	Headwaters to Bear Trap Spring		A&Wc				FBC			FC		AgL
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Sycamore Creek			A&Ww			FBC			FC		AgL
BW	Date Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL

BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek			A&Ww			FBC		DWS	FC	AgI	AgL
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC	AgI	AgL
BW	Knight Creek	Headwaters to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Peeples Canyon (OAW)	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Red Lake	35°12'18"/113°03'57"	Sedimentary		A&Ww			FBC			FC		AgL
BW	Santa Maria River	Headwaters to Alamo Lake			A&Ww			FBC			FC	AgI	AgL
BW	Trout Creek	Headwaters to confluence with unnamed tributary at 35°06'47"/113°13'01"		A&Wc				FBC			FC		AgL
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek			A&Ww			FBC			FC		AgL
CG	Agate Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River			A&Ww			FBC			FC		AgL
CG	Big Springs Tank	36°36'08"/112°21'01"		A&Wc				FBC			FC		AgL
CG	Boucher Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek		A&Wc				FBC			FC		
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Wash	Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"				A&We			PBC				
CG	Bright Angel Wash (EDW)	Grand Canyon National Park South Rim WWTP outfall to Coconino Wash					A&Wedw		PBC				AgL
CG	Bulrush	Headwaters to confluence with Kanab				A&We			PBC				

	Canyon Wash	Creek											
CG	Cataract Creek	Headwaters to Santa Fe Reservoir		A&Wc				FBC		DWS	FC	AgI	AgL
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/112°11'18"		A&Wc				FBC			FC	AgI	AgL
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream					A&Wedw		PBC				
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary					A&We		PBC				AgL
CG	Cataract Lake	35°15'04"/112°12'58"	Igneous	A&Wc				FBC		DWS	FC		AgL
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/111°52'20"		A&Wc				FBC			FC		
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	City Reservoir	35°13'57"/112°11'25"	Igneous	A&Wc				FBC		DWS	FC		
CG	Clear Creek	Headwaters to confluence with unnamed tributary at 36°07'33"/112°00'03"		A&Wc				FBC			FC		
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream						A&Wedw		PBC			
CG	Colorado River	Lake Powell to Lake Mead		A&Wc				FBC		DWS	FC	AgI	AgL
CG	Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/113°35'31"		A&We				FBC			FC		AgL
CG	Cottonwood Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		AgL
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/112°11'49"		A&Wc				FBC			FC		
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		

CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/112°28'20"		A&Wc			FBC			FC		
CG	Deer Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww		FBC			FC		
CG	Detrital Wash	Headwaters to Lake Mead				A&We		PBC				
CG	Dogtown Reservoir	35°12'40"/112°07'54"	Igneous	A&Wc			FBC		DWS	FC	AgI	AgL
CG	Dragon Creek	Headwaters to confluence with Milk Creek		A&Wc			FBC			FC		
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek			A&Ww		FBC			FC		
CG	Garden Creek	Headwaters to confluence with Pipe Creek			A&Ww		FBC			FC		
CG	Gonzalez Lake	35°15'26"/112°12'09"	Shallow		A&Ww		FBC			FC	AgI	AgL
CG	Grand Wash	Headwaters to Colorado River				A&We		PBC				
CG	Grapevine Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Grapevine Wash	Headwaters to Colorado River				A&We		PBC				
CG	Hakatai Canyon	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Hance Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Havasupai Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"		A&Wc			FBC			FC		
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Horn Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC			FC		
CG	Hualapai Wash	Headwaters to Lake Mead				A&We		PBC				

CG	Jacob Lake	36°42'27"/112°13'50"	Sedimentary	A&Wc				FBC			FC		
CG	Kaibab Lake	35°17'04"/112°09'32"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Kanab Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC		DWS	FC		AgL
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/111°54'50"		A&Wc				FBC			FC		
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Lake Mead	36°06'18"/114°26'33"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Lake Powell	36°59'53"/111°08'17"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Monument Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Nankoweap Creek	Headwaters to confluence with unnamed tributary at 36°15'29"/111°57'26"		A&Wc				FBC			FC		
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/112°52'34"			A&Ww			FBC			FC		
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/111°55'41"		A&Wc				FBC			FC		
CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Olo Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/113°27'56"		A&Wc				FBC			FC		

CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC	
CG	Paria River	Utah border to confluence with the Colorado River			A&Ww			FBC			FC	
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/112°08'13"			A&Wc			FBC			FC	
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek			A&Ww			FBC			FC	
CG	Pipe Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC	
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River '			A&Ww			FBC			FC	
CG	Red Lake	35°40'03"/114°04'07"			A&Ww			FBC			FC	AgL
CG	Roaring Springs	36°11'45"/112°02'06"			A&Wc			FBC		DWS	FC	
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek			A&Wc			FBC			FC	
CG	Rock Canyon	Headwaters to confluence with Truxton Wash				A&We			PBC			
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC	
CG	Ruby Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC	
CG	Russell Tank	35°52'21"/111°52'45"			A&Wc			FBC			FC	AgL
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/112°22'43"			A&Wc			FBC			FC	
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC	
CG	Santa Fe Reservoir	35°14'31"/112°11'10"	Igneous		A&Wc			FBC		DWS	FC	
CG	Sapphire Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC	
CG	Serpentine	Headwaters to confluence with the			A&Ww			FBC			FC	

	Canyon	Colorado River											
CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18"/112°18'07"		A&Wc			FBC				FC		
CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww		FBC				FC		
CG	Short Creek	Headwaters to confluence with Fort Pearce Wash				A&We			PBC				
CG	Slate Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC				FC		
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC				FC		
CG	Stone Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC				FC		
CG	Tapeats Creek	Headwaters to confluence with the Colorado River		A&Wc			FBC				FC		
CG	Thunder River	Headwaters to confluence with Tapeats Creek		A&Wc			FBC				FC		
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC				FC		
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"				A&We			PBC				
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream					A&Wedw		PBC				
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek				A&We			PBC				
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww		FBC				FC		
CG	Truxton Wash	Headwaters to Red Lake				A&We			PBC				
CG	Turquoise	Headwaters to confluence with the			A&Ww		FBC				FC		

	Canyon	Colorado River											
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River			A&Ww			FBC			FC		
CG	Unnamed Wash (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/111°49'13" to confluence with Cedar Canyon					A&Wedw		PBC				
CG	Unnamed Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash					A&Wedw		PBC				
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"			A&Wc			FBC			FC		
CG	Virgin River	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC	AgI	AgL
CG	Vishnu Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek			A&Wc			FBC			FC		AgL
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/112°21'03"			A&Wc			FBC			FC		
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/113°30'40"			A&Wc			FBC			FC		AgL
CG	Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash			A&Ww			FBC			FC		AgL
CL	A10 Backwater	33°31'45"/114°33'19"	Shallow		A&Ww			FBC			FC		
CL	A7 Backwater	33°34'27"/114°32'04"	Shallow		A&Ww			FBC			FC		

CL	Adobe Lake	33°02'36"/114°39'26"	Shallow		A&Ww			FBC			FC		
CL	Cibola Lake	33°14'01"/114°40'31"	Shallow		A&Ww			FBC			FC		
CL	Clear Lake	33°01'59"/114°31'19"	Shallow		A&Ww			FBC			FC		
CL	Columbus Wash	Headwaters to confluence with the Gila River				A&We			PBC				
CL	Colorado River	Lake Mead to Topock Marsh			A&Wc			FBC		DWS	FC	AgI	AgL
CL	Colorado River	Topock Marsh to Morelos Dam			A&Ww			FBC		DWS	FC	AgI	AgL
CL	Gila River	Painted Rock Dam to confluence with the Colorado River			A&Ww			FBC			FC	AgI	AgL
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"				A&We			PBC				
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream					A&Wedw		PBC				
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash				A&We			PBC				
CL	Hunter's Hole Backwater	32°31'13"/114°48'07"	Shallow		A&Ww			FBC			FC		AgL
CL	Imperial Reservoir	32°53'02"/114°27'54"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Island Lake	33°01'44"/114°36'42"	Shallow		A&Ww			FBC			FC		
CL	Laguna Reservoir	32°51'35"/114°28'29"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Havasu	34°35'18"/114°25'47"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Mohave	35°26'58"/114°38'30"	Deep		A&Wc			FBC		DWS	FC	AgI	AgL
CL	Martinez Lake	32°58'49"/114°28'09"	Shallow		A&Ww			FBC			FC	AgI	AgL
CL	Mittry Lake	32°49'17"/114°27'54"	Shallow		A&Ww			FBC			FC		
CL	Mohave Wash	Headwaters to Lower Colorado River				A&We			PBC				
CL	Nortons Lake	33°02'30"/114°37'59"	Shallow		A&Ww			FBC			FC		

CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
CL	Pretty Water Lake	33°19'51"/114°42'19"	Shallow		A&Ww			FBC			FC		
CL	Quigley Pond	32°43'40"/113°57'44"	Shallow		A&Ww			FBC			FC		
CL	Redondo Lake	32°44'32"/114°29'03"	Shallow		A&Ww			FBC			FC		
CL	Sacramento Wash	Headwaters to Topock Marsh				A&We			PBC				
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"			A&Ww			FBC			FC		AgL
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash				A&We			PBC				AgL
CL	Topock Marsh	34°43'27"/114°28'59"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Tyson Wash (EDW)	Town of Quartzsite WWTP outfall at 33°42'39"/114°13'10" to 1 km downstream					A&Wedw		PBC				
CL	Wellton Canal	Wellton-Mohawk Irrigation District								DWS		AgI	AgL
CL	Wellton Ponds	32°40'32"/114°00'26"			A&Ww			FBC			FC		
CL	Yuma Proving Ground Pond	32°50'58"/114°26'14"			A&Ww			FBC			FC		
CL	Yuma Area Canals	Above municipal water treatment plant intakes								DWS		AgI	AgL
CL	Yuma Area Canals	Below municipal water treatment plant intakes and all drains										AgI	AgL
LC	Als Lake	35°02'10"/111°25'17"	Igneous		A&Ww			FBC			FC		AgL
LC	Ashurst Lake	35°01'06"/111°24'18"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Atcheson	33°59'59"/109°20'43"	Igneous		A&Ww			FBC			FC	AgI	AgL

	Reservoir												
LC	Auger Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon		A&Wc				FBC			FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc				FBC			FC		AgL
LC	Bear Canyon Lake	34°24'00"/111°00'06"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Becker Lake	34°09'11"/109°18'23"	Shallow	A&Wc				FBC			FC		AgL
LC	Billy Creek	Headwaters to confluence with Show Low Creek		A&Wc				FBC			FC		AgL
LC	Black Canyon	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC	AgI	AgL
LC	Black Canyon Lake	34°20'32"/110°40'13"	Sedimentary	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Boot Lake	34°58'54"/111°20'11"	Igneous	A&We				FBC			FC		AgL
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag					A&We		PBC				
LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Bunch Reservoir	34°02'20"/109°26'48"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Camillo Tank	34°55'03"/111°22'40"	Igneous		A&Ww			FBC			FC		AgL
LC	Carnero Lake	34°06'57"/109°31'42"	Shallow	A&Wc				FBC			FC		AgL
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Chevelon	Headwaters to confluence with the Little		A&Wc				FBC			FC	AgI	AgL

	Creek	Colorado River											
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Chilson Tank	34°51'43"/111°22'54"	Igneous		A&Ww			FBC			FC		AgL
LC	Clear Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC		DWS	FC		AgL
LC	Clear Creek Reservoir	34°57'09"/110°39'14"	Shallow	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Coconino Reservoir	35°00'05"/111°24'10"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Colter Reservoir	33°56'39"/109°28'53"	Shallow	A&Wc				FBC			FC		AgL
LC	Concho Creek	Headwaters to confluence with Carrizo Wash		A&Wc				FBC			FC		AgL
LC	Concho Lake	34°26'37"/109°37'40"	Shallow	A&Wc				FBC			FC	AgI	AgL
LC	Cow Lake	34°53'14"/111°18'51"	Igneous		A&Ww			FBC			FC		AgL
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Cragin Reservoir (formerly Blue Ridge Reservoir)	34°32'40"/111°11'33"	Deep	A&Wc				FBC			FC	AgI	AgL
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"			A&Ww			FBC			FC		AgL
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc				FBC			FC		AgL
LC	Daves Tank	34°44'22"/111°17'15"			A&Ww			FBC			FC		AgL
LC	Deep Lake	35°03'34"/111°25'00"	Igneous		A&Ww			FBC			FC		AgL
LC	Dry Lake	34°38'02"/110°23'40"	EDW					A&Wedw		PBC			

	(EDW)												
LC	Ducksnest Lake	34°59'14"/111°23'57"			A&Ww			FBC			FC		AgL
LC	East Clear Creek	Headwaters to confluence with Clear Creek			A&Wc			FBC			FC	AgI	AgL
LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"	EDW				A&Wedw		PBC				
LC	Fish Creek	Headwaters to confluence with the Little Colorado River			A&Wc			FBC			FC		AgL
LC	Fool's Hollow Lake	34°16'30"/110°03'43"	Igneous		A&Wc			FBC			FC		AgL
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek			A&Wc			FBC			FC		AgL
LC	Geneva Reservoir	34°01'45"/109°31'46"	Igneous		A&Ww			FBC			FC		AgL
LC	Hall Creek	Headwaters to confluence with the Little Colorado River			A&Wc			FBC			FC	AgI	AgL
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek			A&Wc			FBC			FC		AgL
LC	Hay Lake	34°00'11"/109°25'57"	Igneous		A&Wc			FBC			FC		AgL
LC	Hog Wallow Lake	33°58'57"/109°25'39"	Igneous		A&Wc			FBC			FC	AgI	AgL
LC	Horse Lake	35°03'55"/111°27'50"			A&Ww			FBC			FC		AgL
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek			A&Wc			FBC			FC		AgL
LC	Hulsey Lake	33°55'58"/109°09'40"	Sedimentary		A&Wc			FBC			FC		AgL
LC	Indian Lake	35°00'39"/111°22'41"			A&Ww			FBC			FC		AgL
LC	Jacks Canyon Creek	Headwaters to confluence with the Little Colorado River			A&Wc			FBC			FC	AgI	AgL

LC	Jarvis Lake	33°58'59"/109°12'36"	Sedimentary		A&Ww			FBC			FC		AgL
LC	Kinnikinick Lake	34°53'53"/111°18'18"	Igneous	A&Wc				FBC			FC		AgL
LC	Knoll Lake	34°25'38"/111°05'13"	Sedimentary	A&Wc				FBC			FC		AgL
LC	Lake Humphreys (EDW)	35°11'51"/111°35'19"	EDW				A&Wedw		PBC				
LC	Lake Mary, Lower	35°06'21"/111°34'38"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake Mary, Upper	35°03'23"/111°28'34"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake of the Woods	34°09'40"/109°58'47"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir		A&Wc				FBC			FC		
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Lee Valley Reservoir	33°56'29"/109°30'04"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Leonard Canyon Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork		A&Wc				FBC			FC		AgL

LC	Lily Creek	Headwaters to confluence with Coyote Creek		A&Wc			FBC			FC		AgL
LC	Little Colorado River	Headwaters to Lyman Reservoir		A&Wc			FBC			FC	AgI	AgL
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River		A&Wc			FBC		DWS	FC	AgI	AgL
LC	Little Colorado River	Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands			A&Ww		FBC		DWS	FC	AgI	AgL
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC		AgL
LC	Little Colorado River, South Fork	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC		AgL
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs		A&Wc			FBC			FC		
LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River		A&Wc			FBC			FC		AgL
LC	Little George Reservoir	34°00'37"/109°19'15"	Igneous		A&Ww		FBC			FC	AgI	
LC	Little Mormon Lake	34°17'00"/109°58'06"	Igneous		A&Ww		FBC			FC	AgI	AgL
LC	Little Ortega Lake	34°22'47"/109°40'06"	Igneous	A&Wc			FBC			FC		
LC	Long Lake, Lower	34°47'16"/111°12'40"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Long Lake,	35°00'08"/111°21'23"	Igneous	A&Wc			FBC			FC		AgL

	Upper													
LC	Long Tom Tank	34°20'35"/110°49'22"		A&Wc				FBC			FC		AgL	
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"	EDW				A&Wedw		PBC					
LC	Lyman Reservoir	34°21'21"/109°21'35"	Deep	A&Wc				FBC			FC	AgI	AgL	
LC	Mamie Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL	
LC	Marshall Lake	35°07'18"/111°32'07"	Igneous	A&Wc				FBC			FC		AgL	
LC	McKay Reservoir	34°01'27"/109°13'48"		A&Wc				FBC			FC	AgI	AgL	
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc				FBC			FC		AgL	
LC	Mexican Hay Lake	34°01'58"/109°21'25"	Igneous	A&Wc				FBC			FC	AgI	AgL	
LC	Milk Creek	Headwaters to confluence with Hulsey Creek		A&Wc				FBC			FC		AgL	
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL	
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek		A&Wc				FBC			FC		AgL	
LC	Mineral Creek	Headwaters to Little Ortega Lake		A&Wc				FBC			FC	AgI	AgL	
LC	Mormon Lake	34°56'38"/111°27'25"	Shallow	A&Wc				FBC		DWS	FC	AgI	AgL	
LC	Morton Lake	34°53'37"/111°17'41"	Igneous	A&Wc				FBC			FC		AgL	
LC	Mud Lake	34°55'19"/111°21'29"	Shallow		A&Ww			FBC			FC		AgL	
LC	Ned Lake (EDW)	34°17'17"/110°03'22"	EDW				A&Wedw		PBC					

LC	Nelson Reservoir	34°02'52"/109°11'19"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Norton Reservoir	34°03'57"/109°31'27"	Igneous		A&Ww			FBC			FC		AgL
LC	Nutriosio Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Paddy Creek	Headwaters to confluence with Nutriosio Creek		A&Wc				FBC			FC		AgL
LC	Phoenix Park Wash	Headwaters to Dry Lake				A&We			PBC				
LC	Pierce Seep	34°23'39"/110°31'17"		A&Wc					PBC				
LC	Pine Tank	34°46'49"/111°17'21"	Igneous		A&Ww			FBC			FC		AgL
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"	EDW				A&Wedw		PBC				
LC	Porter Creek	Headwaters to confluence with Show Low Creek		A&Wc				FBC			FC		AgL
LC	Potato Lake	35°03'15"/111°24'13"	Igneous	A&We				FBC			FC		AgL
LC	Pratt Lake	34°01'32"/109°04'18"	Sedimentary	A&We				FBC			FC		
LC	Puerco River	Headwaters to confluence with the Little Colorado River			A&Ww			FBC		DWS	FC	AgI	AgL
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall at 35°12'52"/109°19'40" to 0.5 km downstream					A&Wedw		PBC				
LC	Rainbow Lake	34°09'00"/109°59'09"	Shallow Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Reagan Reservoir	34°02'09"/109°08'41"	Igneous		A&Ww			FBC			FC		AgL
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"				A&We			PBC				
LC	Rio de Flag (EDW)	From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash					A&Wedw		PBC				
LC	River Reservoir	34°02'01"/109°26'07"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Rogers Reservoir	33°56'30"/109°16'20"	Igneous		A&Ww			FBC			FC		AgL

LC	Rudd Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Russel Reservoir	33°59'29"/109°20'01"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	San Salvador Reservoir	33°58'51"/109°19'55"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Scott Reservoir	34°10'31"/109°57'31"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Show Low Creek	Headwaters to confluence with Silver Creek		A&Wc				FBC			FC	AgI	AgL
LC	Show Low Lake	34°11'36"/110°00'12"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Silver Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
LC	Slade Reservoir	33°59'41"/109°20'26"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Soldiers Annex Lake	34°47'15"/111°13'51"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Soldiers Lake	34°47'47"/111°14'04"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Spaulding Tank	34°30'17"/111°02'06"			A&Ww			FBC			FC		AgL
LC	Sponceller Lake	34°14'09"/109°50'45"	Igneous	A&Wc				FBC			FC		AgL
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"	EDW				A&Wedw		PBC				
LC	Tremaine Lake	34°46'02"/111°13'51"	Igneous	A&Wc				FBC			FC		AgL
LC	Tunnel Reservoir	34°01'53"/109°26'34"	Igneous	A&Wc				FBC			FC	AgI	AgL

LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/110°38'13" to confluence with Black Canyon Creek					A&Wedw		PBC				
LC	Unnamed Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep					A&Wedw		PBC				
LC	Unnamed Wash (EDW)	Black Mesa Ranger Station WWTP outfall at 34°23'35"/110°33'36" to confluence of Oklahoma Flat Draw					A&Wedw		PBC				
LC	Vail Lake	35°05'23"/111°30'46"	Igneous	A&We				FBC			FC		AgL
LC	Walnut Creek	Headwaters to confluence with Billy Creek		A&Wc				FBC			FC		AgL
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Water Canyon Reservoir	34°00'16"/109°20'05"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Whale Lake (EDW)	35°11'13"/111°35'21"		EDW				A&Wedw		PBC			
LC	Whipple Lake	34°16'49"/109°58'29"	Igneous		A&Ww			FBC			FC		AgL
LC	White Mountain Lake	34°21'57"/109°59'21"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	White Mountain Reservoir	34°00'12"/109°30'39"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Willow Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Willow Springs Lake	34°18'13"/110°52'16"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Woodland Reservoir	34°07'35"/109°57'01"	Igneous	A&Wc				FBC			FC	AgI	AgL

LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Woods Canyon Lake	34°20'09"/110°56'45"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Zuni River	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/112°16'18"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169					A&Wedw		PBC				AgL
MG	Agua Fria River	From State Route 169 to Lake Pleasant			A&Ww			FBC		DWS	FC	AgI	AgL
MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/112°18'32"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream					A&Wedw		PBC				
MG	Agua Fria River	Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"				A&We			PBC				
MG	Agua Fria River	From City of Avondale WWTP outfall to confluence with Gila River					A&Wedw		PBC				
MG	Alvord Park Lake	35th Avenue & Baseline Road, Phoenix at 33°22'23"/112°08'20"	Urban		A&Ww				PBC		FC		
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash				A&We			PBC				
MG	Antelope Creek	Headwaters to confluence with Martinez Wash Creek			A&Ww			FBC			FC		AgL
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/112°46'15"											AgL
MG	Ash Creek	Headwaters to confluence with Tex Canyon		A&Wc				FBC			FC	AgI	AgL

MG	Ash Creek	Below confluence with Tex Canyon to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Beehive Tank	32°52'37"/111°02'20"			A&Ww			FBC			FC		AgL
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch			A&Wc			FBC			FC	AgI	AgL
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	Bonsall Park Lake	59th Avenue & Bethany Home Road, Phoenix at 33°31'24"/112°11'08"	Urban		A&Ww				PBC		FC		
MG	Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/111°56'19"	Urban		A&Ww				PBC		FC		
MG	Cave Creek	Headwaters to the Cave Creek Dam			A&Ww			FBC			FC		AgL
MG	Cave Creek	Cave Creek Dam to the Arizona Canal				A&We			PBC				
MG	Centennial Wash	Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"				A&We			PBC				AgL
MG	Centennial Wash Ponds	33°54'52"/113°23'47"			A&Ww			FBC			FC		AgL
MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"	Urban		A&Ww				PBC		FC	AgI	
MG	Cortez Park Lake	35th Avenue & Dunlap, Glendale at 33°34'13"/112°07'52"	Urban		A&Ww				PBC		FC	AgI	
MG	Desert Breeze Lake	Galaxy Drive, West Chandler at 33°18'47"/111°55'10"	Urban		A&Ww				PBC		FC		
MG	Devils Canyon	Headwaters to confluence with Mineral Creek			A&Ww				FBC		FC		AgL
MG	Dobson Lake	Dobson Road & Los Lagos Vista Avenue, Mesa at 33°22'48"/111°52'35"	Urban		A&Ww				PBC		FC		
MG	East Maricopa	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary				A&We			PBS				AgL

	Floodway													
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/ 111°54'53"	Urban		A&Ww				PBC		FC			
MG	Encanto Park Lake	15th Avenue & Encanto Blvd., Phoenix at 33°28'28"/ 112°05'18"	Urban		A&Ww				PBC		FC	AgI		
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/ 112°21'06"	Urban		A&Ww				PBC		FC			
MG	French Gulch	Headwaters to confluence with Hassayampa River			A&Ww				PBC				AgL	
MG	Galena Gulch	Headwaters to confluence with the Agua Fria River				A&We			PBC				AgL	
MG	Galloway Wash (EDW)	Town of Cave Creek WWTP outfall at 33°50'15"/ 111°57'35" to confluence with Cave Creek					A&Wedw		PBC					
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam			A&Ww			FBC			FC	AgI	AgL	
MG	Gila River	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"				A&We			PBC				AgL	
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road					A&Wedw		PBC					
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary				A&We			PBC				AgL	
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam					A&Wedw		PBC		FC	AgI	AgL	
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam			A&Ww			FBC			FC	AgI	AgL	
MG	Granada Park Lake	6505 North 20th Street, Phoenix at 33°31'56"/ 112°02'16"	Urban		A&Ww				PBC		FC			
MG	Groom Creek	Headwaters to confluence with the Hassayampa River			A&Wc			FBC		DWS	FC		AgL	
MG	Hassayampa Lake	34°25'45"/112°25'33"	Igneous		A&Wc			FBC		DWS	FC			
MG	Hassayampa River	Headwaters to confluence with Copper Creek unnamed tributary at 34°26'09"/112°30'32"			A&Wc			FBC			FC	AgI	AgL	

MG	Hassayampa River	<del>Below confluence with Copper Creek to the confluence with Blind Indian Creek-</del> <del>Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51'52"/112°39'56"</del>			A&Ww			FBC			FC	AgI	AgL
MG	Hassayampa River	Below <del>unnamed tributary confluence with Blind Indian Creek</del> to the Buckeye Irrigation Company Canal				A&We			PBC				AgL
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River			A&Ww			FBC			FC		AgL
MG	Horsethief Lake	34°09'42"/112°17'57"	Igneous		A&Wc			FBC		DWS	FC		AgL
MG	Indian Bend Wash	Headwaters to confluence with the Salt River				A&We			PBC				
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"	Urban		A&Ww				PBC		FC		
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/111°54'37"	Urban		A&Ww				PBC		FC		
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/111°56'22"	Urban		A&Ww				PBC		FC	AgI	
MG	Lake Pleasant	33°53'46"/112°16'29"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
MG	Lake Pleasant, Lower	33°50'32"/112°16'03"			A&Ww			FBC			FC	AgI	AgL
MG	Lion Canyon	Headwaters to confluence with Weaver Creek			A&Ww			FBC			FC		AgL
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at			A&Ww			FBC			FC		AgL
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/112°21'07"			A&Wc			FBC			FC		AgL
MG	Lynx Creek	Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River			A&Ww			FBC			FC		AgL
MG	Lynx Lake	34°31'07"/112°23'07"	Deep		A&Wc			FBC		DWS	FC	AgI	AgL

MG	Maricopa Park Lake	33°35'28"/112°18'15"	Urban		A&Ww				PBC		FC		
MG	Martinez Canyon	Headwaters to confluence with Box Canyon			A&Ww			FBC			FC		AgL
MG	Martinez Wash Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC	AgI	AgL
MG	McKellips Park Lake	Miller Road & McKellips Road, Scottsdale at 33°27'14"/111°54'49"	Urban		A&Ww				PBC		FC	AgI	
MG	McMicken Wash (EDW)	City of Peoria Jomax WWTP outfall at 33°43'31"/ 112°20'15" to confluence with Agua Fria River					A&Wedw		PBC				
MG	Mineral Creek	Headwaters to 33°12'34"/110°59'58"			A&Ww			FBC			FC		AgL
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34"							PBC				
MG	Mineral Creek	End of diversion channel to confluence with Gila River			A&Ww			FBC			FC		AgL
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	New River	Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"			A&Ww			FBC			FC	AgI	AgL
MG	New River	Below Interstate 17 to confluence with Agua Fria River				A&We			PBC				AgL
MG	Painted Rock Reservoir	33°04'23"/113°00'38"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"	Urban		A&Ww				PBC		FC		
MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"	Urban		A&Ww				PBC		FC		
MG	Perry Mesa Tank	34°11'03"/112°02'01"			A&Ww			FBC			FC		AgL

MG	Phoenix Area Canals	Granite Reef Dam to all municipal WTP intakes								DWS		AgI	AgL
MG	Phoenix Area Canals	Below municipal WTP intakes and all other locations										AgI	AgL
MG	Picacho Reservoir	32°51'10"/111°28'25"	Shallow		A&Ww			FBC			FC	AgI	AgL
MG	Poland Creek	Headwaters to confluence with Lorena Gulch			A&Wc			FBC			FC		AgL
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek			A&Ww			FBC			FC		AgL
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/111°07'44"			A&Ww				PBC		FC		AgL
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon					A&Wedw		PBC				
MG	Queen Creek	Below Potts Canyon to ' Whitlow Dam			A&Ww			FBC			FC		AgL
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River					A&We		PBC				
MG	Riverview Park Lake	Dobson Road & 8th Street, Mesa at 33°25'50"/111°52'29"	Urban		A&Ww				PBC		FC		
MG	Roadrunner Park Lake	36th Street & Cactus, Phoenix at 33°35'56"/112°00'21"	Urban		A&Ww				PBC		FC		
MG	Salt River	Verde River to 2 km below Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
MG	Salt River	2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"					A&We		PBC				
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake					A&Wedw		PBC				
MG	Salt River	Below Tempe Town Lake to Interstate 10 bridge					A&We		PBC				
MG	Salt River	Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at			A&Ww				PBC		FC		

		33°24'44"/112°07'59"											
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River					A&Wedw		PBC		FC	Agl	AgL
MG	Siphon Draw (EDW)	Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream					A&Wedw		PBC				
MG	Sycamore Creek	Headwaters to confluence with Tank Canyon			A&Wc				FBC		FC		AgL
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River				A&Ww			FBC		FC		AgL
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"	Urban			A&Ww			FBC		FC		
MG	The Lake Tank	32°54'14"/111°04'15"				A&Ww			FBC		FC		AgL
MG	Tule Creek	Headwaters to confluence with the Agua Fria River				A&Ww			FBC		FC		AgL
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/112°21'33"				A&Wc			FBC		FC	Agl	AgL
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek				A&Ww			FBC		FC	Agl	AgL
MG	Unnamed Wash (EDW)	Gila Bend WWTP outfall to confluence with the Gila River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Luke Air Force Base WWTP outfall at 33°32'21"/112°19'15" to confluence with the Agua Fria River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	North Florence WWTP outfall at 33°03'50"/111°23'13" to confluence with Gila River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Town of Prescott Valley WWTP outfall at 34°35'16"/112°16'18" to confluence with the Agua Fria River					A&Wedw		PBC				
MG	Unnamed Wash (EDW)	Town of Cave Creek WRF outfall at 33°48'02"/111°59'22" to confluence with Cave Creek					A&Wedw		PBC				
MG	Wagner Wash (EDW)	City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km					A&Wedw		PBC				

		downstream											
MG	Walnut Canyon Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
MG	Weaver Creek	Headwaters to confluence with Antelope Creek, tributary to Martinez Wash Creek			A&Ww			FBC			FC		AgL
MG	White Canyon Creek	Headwaters to confluence with Walnut Canyon Creek			A&Ww			FBC			FC		AgL
MG	Yavapai Lake (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash	EDW				A&Wedw		PBC				
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/110°43'52"	Urban		A&Ww				PBC		FC		
SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail			A&Ww			FBC			FC		AgL
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek				A&We			PBC				AgL
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"				A&We			PBC				
SC	Alambre Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alamo Wash	Headwaters to confluence with Rillito Creek				A&We			PBC				
SC	Altar Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"				A&We			PBC				AgL
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"			A&Ww			FBC			FC		AgL
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek				A&We			PBC				AgL
SC	Arivaca Creek	Headwaters to confluence with Altar Wash			A&Ww			FBC			FC		AgL

SC	Arivaca Lake	31°31'52"/111°15'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash				A&We			PBC				AgL
SC	Bear Grass Tank	31°33'01"/111°11'03"			A&Ww			FBC			FC		AgL
SC	Big Wash	Headwaters to confluence with Cañada del Oro				A&We			PBC				
SC	Black Wash (EDW)	Pima County WWMD Avra Valley WWTP outfall at 32°09'58"/111°11'17" to confluence with Brawley Wash					A&Wedw		PBC				
SC	Bog Hole Tank	31°28'36"/110°37'09"			A&Ww			FBC			FC		AgL
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash				A&We			PBC				
SC	California Gulch	Headwaters To U.S./Mexico border			A&Ww			FBC			FC		AgL
SC	Cañada del Oro	Headwaters to State Route 77			A&Ww			FBC			FC	AgI	AgL
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon			A&Ww			FBC			FC		AgL
SC	Cienega Creek (OAW)	From confluence with Gardner Canyon to USGS gaging station (#09484600)			A&Ww			FBC			FC		AgL
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/110°38'49"				A&We			PBC				AgL
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"			A&Ww			FBC			FC		AgL
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"				A&We			PBC				AgL
SC	Davidson Canyon	From unnamed spring to confluence with Cienega Creek			A&Ww			FBC			FC		AgL

	(OAW)													
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/ 110°38'17"				A&We			PBC					
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"				A&Ww			FBC			FC		
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/ 110°36'58"				A&We			PBC					AgL
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek				A&Ww			FBC			FC		
SC	Flux Canyon	Headwaters to confluence with Alum Gulch				A&We			PBC					AgL
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon				A&Wc			FBC			FC		
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek				A&Ww			FBC			FC		
SC	Greene Wash	Santa Cruz River to the Tohono O'odham Indian Reservation boundary				A&We			PBC					
SC	Greene Wash	Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/ 111°56'48"				A&We			PBC					
SC	Harshaw Creek	Headwaters to confluence with Sonoita Creek at				A&We			PBC					AgL
SC	Hit Tank	32°43'57"/111°03'18"				A&Ww			FBC			FC		AgL
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border				A&Ww			FBC			FC		
SC	Huachuca Tank	31°21'11"/110°30'18"				A&Ww			FBC			FC		AgL
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC					
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at 32°10'49"/ 111°00'27"	Urban			A&Ww			PBC			FC		
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/ 110°49'00"	Urban			A&Ww			PBC			FC		

SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/110°47'49"		A&Wc				FBC			FC		
SC	Lemmon Canyon Creek	Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek			A&Ww			FBC			FC		
SC	Los Robles Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC				
SC	Madera Canyon Creek	Headwaters to confluence with unnamed tributary at 31°43'42"/110°52'51"		A&Wc				FBC			FC		AgL
SC	Madera Canyon Creek	Below unnamed tributary at 31°43'42"/110°52'51" to confluence with the Santa Cruz River			A&Ww			FBC			FC		AgL
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek			A&Ww			FBC			FC		AgL
SC	Nogales Wash	Headwaters to confluence with Potrero Creek			A&Ww				PBC		FC		
SC	Oak Tree Canyon	Headwaters to confluence with Cienega Creek				A&We			PBC				
SC	Palisade Canyon	Headwaters to confluence with unnamed tributary at 32°22'33"/110°45'31"		A&Wc				FBC			FC		
SC	Palisade Canyon	Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon			A&Ww			FBC			FC		
SC	Pantano Wash	Headwaters to confluence with Tanque Verde Creek				A&We			PBC				
SC	Parker Canyon Creek	Headwaters to confluence with unnamed tributary at 31°24'17"/110°28'47"	A&Wc					FBC			FC		
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border			A&Ww			FBC			FC		
SC	Parker Canyon Lake	31°25'35"/110°27'15"	Deep	A&Wc				FBC			FC	AgI	AgL
SC	Patagonia Lake	31°29'56"/110°50'49"	Deep		A&Ww			FBC			FC	AgI	AgL

SC	Peña Blanca Lake	31°24'15"/111°05'12"	Igneous		A&Ww			FBC			FC	AgI	AgL
SC	Potrero Creek	Headwaters to Interstate 19				A&We			PBC				AgL
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River			A&Ww			FBC			FC		AgL
SC	Puertocito Wash	Headwaters to confluence with Altar Wash				A&We			PBC				
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"			A&Ww			FBC			FC		AgL
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek			A&Ww			FBC			FC		
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Romero Canyon Creek	Headwaters to confluence with unnamed tributary at 32°24'29"/110°50'39"			A&Wc			FBC			FC		
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash			A&Ww			FBC			FC		
SC	Rose Canyon Creek	Headwaters to confluence with Sycamore Canyon			A&Wc			FBC			FC		
SC	Rose Canyon Lake	32°23'13"/110°42'38"	Igneous		A&Wc			FBC			FC		AgL
SC	Ruby Lakes	31°26'29"/111°14'22"	Igneous		A&Ww			FBC			FC		AgL
SC	Sabino Canyon	Headwaters to 32°23'20"/110°47'06"			A&Wc			FBC		DWS	FC	AgI	
SC	Sabino Canyon	Below 32°23'20"/110°47'06" to confluence with Tanque Verde River			A&Ww			FBC		DWS	FC	AgI	
SC	Salero Ranch Tank	31°35'43"/110°53'25"			A&Ww			FBC			FC		AgL
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border			A&Ww			FBC			FC	AgI	AgL

SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"			A&Ww			FBC		DWS	FC	AgI	AgL
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the <del>Josephine Canyon</del> Tubac Bridge					A&Wedw		PBC				AgL
SC	Santa Cruz River	<del>Josephine Canyon</del> Tubac Bridge to Agua Nueva WRF outfall at 32°17'04"/111°01'45"				A&We			PBC				AgL
SC	Santa Cruz River (EDW)	Agua Nueva WRF outfall to Baumgartner Road					A&Wedw		PBC				
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River				A&We			PBC				AgL
SC	Santa Cruz River	Baumgartner Road to the Ak Chin Indian Reservation boundary				A&We			PBC				AgL
SC	Santa Cruz Wash, North Branch	Headwaters to City of Casa Grande WRF outfall at 32°54'57"/111°47'13"				A&We			PBC				
SC	Santa Cruz Wash, North Branch (EDW)	City of Casa Grande WRF outfall to 1 km downstream					A&Wedw		PBC				
SC	Santa Rosa Wash	Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation				A&We			PBC				
SC	Santa Rosa Wash (EDW)	Palo Verde Utilities CO-WRF outfall at 33°04'20"/ 112°01'47" to the Chin Indian Reservation					A&Wedw		PBC				
SC	Soldier Tank	32°25'34"/110°44'43"			A&Wc			FBC			FC		AgL
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"				A&We			PBC				AgL
SC	Sonoita Creek (EDW)	Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall					A&Wedw		PBC				AgL
SC	Sonoita	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater			A&Ww			FBC			FC	AgI	AgL

	Creek	upwelling point to confluence with the Santa Cruz River											
SC	Split Tank	31°28'11"/111°05'12"			A&Ww			FBC			FC		AgL
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro			A&Ww			FBC			FC		
SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"			A&Wc			FBC			FC		
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir			A&Ww			FBC			FC		
SC	Sycamore Canyon	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC		AgL
SC	Sycamore Reservoir	32°20'57"/110°47'38"			A&Wc			FBC			FC		AgL
SC	Tanque Verde Creek	Headwaters to Houghton Road			A&Ww			FBC			FC		AgL
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek				A&We			PBC				AgL
SC	Three R Canyon	Headwaters to Unnamed Trib to Three R Canyon at 31°28'26"/110°46'04"				A&We			PBC				AgL
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)			A&Ww			FBC			FC		AgL
SC	Three R Canyon	From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek				A&We			PBC				AgL
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Unnamed Wash (EDW)	Oracle Sanitary District WWTP outfall at 32°36'54"/ 110°48'02" to 5 km downstream					A&Wedw		PBC				
SC	Unnamed Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash					A&Wedw		PBC				
SC	Unnamed Wash (EDW)	Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro					A&Wedw		PBC				
SC	Vekol Wash	Headwater to Santa Cruz Wash: Those reaches not located on the Ak-Chin,				A&We			PBC				

		Tohono O'odham and Gila River Indian Reservations											
SC	Wakefield Canyon	Headwaters to confluence with unnamed tributary at 31°52'48"/110°26'27"		A&Wc			FBC			FC		AgL	
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek		A&Ww			FBC			FC		AgL	
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/111°05'47"		A&Ww			FBC			FC		AgL	
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa Cruz River			A&We			PBC				AgL	
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw		A&Ww			FBC			FC		AgL	
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch		A&Ww			FBC			FC		AgL	
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area		A&Ww			FBC			FC		AgL	
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River		A&Ww			FBC			FC		AgL	
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"		A&Ww			FBC			FC	AgL	AgL	
SP	Babocomari River	Headwaters to confluence with the San Pedro River		A&Ww			FBC			FC		AgL	
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/110°13'22"		A&Wc			FBC			FC		AgL	
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek		A&Ww			FBC			FC		AgL	
SP	Bass Canyon Tank	32°24'00"/110°13'00"		A&Ww			FBC			FC		AgL	
SP	Bear Creek	Headwaters to U.S./Mexico border		A&Ww			FBC			FC		AgL	
SP	Big Creek	Headwaters to confluence with Pitchfork Canyon		A&We			FBC			FC		AgL	

SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°31'04"/110°24'47", headwater lake in Blacktail Canyon			A&Ww			FBC			FC	
SP	Black Draw	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC	AgL
SP	Booger Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC	AgL
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank			A&Ww			FBC			FC	AgL
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek				A&We			PBC			AgL
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/110°32'10"			A&Ww			FBC			FC	AgL
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River			A&Ww			FBC			FC	AgL
SP	Bull Tank	32°31'13"/110°42'52"			A&Ww			FBC			FC	AgL
SP	Bullock Canyon	Headwaters to confluence with Buehman Canyon			A&Ww			FBC			FC	AgL
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/110°15'48"		A&Wc				FBC			FC	AgL
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC	AgL
SP	Copper Creek	Headwaters to confluence with Prospect Canyon			A&Ww			FBC			FC	AgL
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River				A&We			PBC			AgL
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/110°20'11"		A&Wc				FBC			FC	AgL
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek			A&Ww			FBC			FC	AgL
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon			A&Ww			FBC			FC	AgL
SP	Double R	Headwaters to confluence with Bass			A&Ww			FBC			FC	

	Canyon Creek	Canyon											
SP	Dry Canyon	Headwaters to confluence with Whitewater draw			A&Ww			FBC			FC		AgL
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/110°19'44"	Sedimentary		A&Ww			FBC			FC		
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash			A&Ww			FBC			FC		AgL
SP	Fly Pond	Fort Huachuca Military Reservation at 31°32'53"/110°21'16"			A&Ww			FBC			FC		
SP	Fourmile Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/110°23'46"		A&Wc				FBC			FC		AgL
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek			A&Ww			FBC			FC		AgL
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon			A&Ww			FBC			FC		AgL
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/110°19'44"		A&Wc				FBC		DWS	FC	AgL	
SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC		DWS	FC	AgL	
SP	Glance Creek	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Gold Gulch	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Goudy Canyon Wash	Headwaters to confluence with Grant Creek		A&Wc				FBC			FC		AgL

SP	Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/109°56'37"		A&Wc			FBC		DWS	FC		AgL
SP	Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww		FBC			FC		AgL
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/ 110°19'49"	Sedimentary		A&Ww		FBC			FC		
SP	Greenbush Draw	From U.S./Mexico border to confluence with San Pedro River				A&We		PBC				
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/ 109°22'17"			A&Ww		FBC			FC		
SP	High Creek	Headwaters to confluence with unnamed tributary at 32°33'08"/110°14'42"		A&We			FBC			FC		AgL
SP	High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww		FBC			FC		AgL
SP	Horse Camp Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww		FBC			FC		AgL
SP	Hot Springs Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww		FBC			FC		AgL
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/ 109°43'32"			A&Ww		FBC			FC		AgL
SP	Lake Cochise (EDW)	South of Twin Lakes Municipal Golf Course at 32°13'50"/109°49'27"	EDW				A&Wedw	PBC				
SP	Leslie Canyon Creek	Headwaters to confluence with Whitewater Draw			A&Ww		FBC			FC		AgL
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/ 110°18'34"			A&Ww		FBC			FC		
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon			A&Ww		FBC			FC		AgL
SP	Miller Canyon	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"		A&Wc			FBC		DWS	FC		AgL

SP	Miller Canyon	Below Broken Arrow Ranch Road to confluence with the San Pedro River			A&Ww			FBC		DWS	FC		AgL
SP	<del>Moonshine Creek</del>	<del>Headwaters to confluence with Post Creek</del>			<del>A&amp;Wc</del>			<del>FBC</del>			<del>FC</del>		<del>AgL</del>
SP	Mountain View Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/110°18'52"	Sedimentary		A&Ww				PBC		FC		
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/109°54'02"			A&Ww				PBC		FC		
SP	Mule Gulch	The Lavender Pit to the Highway 80 bridge at 31°26'30"/109°49'28"				A&We			PBC				
SP	Mule Gulch	Below the Highway 80 bridge to confluence with Whitewater Draw				A&We			PBC				AgL
SP	Oak Grove Canyon	Headwaters to confluence with Turkey Creek			A&Ww			FBC			FC		AgL
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/110°21'37"	Sedimentary		A&Ww				PBC		FC		
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Parsons Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	<del>Pinery Creek</del>	<del>Headwaters to State Highway 181</del>			<del>A&amp;We</del>			<del>FBC</del>		<del>DWS</del>	<del>FC</del>		<del>AgL</del>
SP	<del>Pinery Creek</del>	<del>Below State Highway 181 to terminus near Willeox Playa</del>			<del>A&amp;Ww</del>			<del>FBC</del>		<del>DWS</del>	<del>FC</del>		<del>AgL</del>
SP	<del>Post Creek</del>	<del>Headwaters to confluence with Grant Creek</del>			<del>A&amp;We</del>			<del>FBC</del>			<del>FC</del>	<del>AgL</del>	<del>AgL</del>
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"			A&Wc			FBC			FC	AgL	AgL
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash			A&Ww			FBC			FC	AgL	AgL
SP	Rattlesnake Creek	Headwaters to confluence with Brush Canyon			A&Wc			FBC			FC		AgL

SP	Rattlesnake Creek	Below confluence with Brush Canyon to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Redfield Canyon	Headwaters to confluence with unnamed tributary at 32°33'40"/110°18'42"			A&Wc			FBC			FC		AgL
SP	Redfield Canyon	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Riggs Lake	32°42'28"/109°57'53"	Igneous		A&We			FBC			FC	AgL	AgL
SP	Rock Creek	Headwaters to confluence with Turkey Creek A/c						FBC			FC		AgL
SP	Rucker Canyon	Headwaters to confluence with Whitewater Draw			A&Wc			FBC			FC		AgL
SP	Rucker Canyon Lake	31°46'46"/109°18'30"	Shallow		A&Wc			FBC			FC		AgL
SP	San Pedro River	U.S./ Mexico Border to Buehman Canyon			A&Ww			FBC			FC	AgL	AgL
SP	San Pedro River	From Buehman canyon to confluence with the Gila River			A&Ww			FBC			FC		AgL
SP	Snow Flat Lake	32°39'10"/109°54'54"	Igneous		A&We			FBC			FC	AgL	AgL
SP	Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/109°54'41"			A&We			FBC			FC		AgL
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon			A&Ww			FBC			FC		AgL
SP	Swamp Springs Canyon	Headwaters to confluence with Redfield Canyon			A&Ww			FBC			FC		AgL
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/ 110°26'11"	Sedimentary		A&Ww			FBC			FC		
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/ 110°26'10"	Sedimentary		A&Ww			FBC			FC		
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Turkey Creek	Headwaters to confluence with Rock Creek			A&We			FBC			FC	AgL	AgL
		Below confluence with Rock Creek to											

SP	Turkey Creek	terminus near Willcox Playa			A&Ww			FBC			FC	AgI	AgL
SP	Unnamed Wash (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream					A&Wedw		PBC				
SP	Virgus Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"				A&We			PBC				
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash					A&Wedw		PBC				
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River				A&We			PBC				
SP	Ward Canyon	Headwaters to confluence with Turkey Creek			A&Wc			FBC			FC		AgL
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/109°43'48"				A&We			PBC				AgL
SP	Whitewater Draw	Below confluence with unnamed tributary to U.S./ Mexico border			A&Ww			FBC			FC		AgL
SP	Willcox Playa	From 32°08'19"/109°50'59" in the Sulphur Springs Valley	Sedimentary		A&Ww			FBC			FC		AgL
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/ 110°20'12"	Igneous		A&Ww			FBC			FC		
SR	Ackre Lake	33°37'01"/109°20'40"			A&Wc			FBC			FC	AgI	AgL
SR	Apache Lake	33°37'23"/111°12'26"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Barnhard Creek	Headwaters to confluence with unnamed tributary at 34°05'37"/111°26'40"			A&Wc			FBC			FC		AgL
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek			A&Ww			FBC			FC		AgL
SR	Basin Lake	33°55'00"/109°26'09"	Igneous		A&Ww			FBC			FC		AgL
SR	Bear Creek	Headwaters to confluence with the Black River			A&Wc			FBC			FC	AgI	AgL
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River			A&Wc			FBC			FC		AgL

SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Bear Wallow Creek, South Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Beaver Creek	Headwaters to confluence with Black River		A&Wc				FBC			FC	AgI	AgL
SR	Big Lake	33°52'36"/109°25'33"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River	Headwaters to confluence with Salt River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, North Fork of East Fork	Headwaters to confluence with Boneyard Creek		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, West Fork	Headwaters to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road				A&We			PBC				AgL
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash				A&We			PBC				
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek		A&Wc				FBC			FC	AgI	AgL
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Boulder Creek	Headwaters to confluence with LaBarge Creek			A&Ww			FBC			FC		
SR	Campaign Creek	Headwaters to Roosevelt Lake			A&Ww			FBC			FC		AgL
SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Canyon Lake	33°32'44"/111°26'19"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Centerfire Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Chambers	Headwaters to confluence with the North		A&Wc				FBC			FC		AgL

	Draw Creek	Fork of the East Fork of Black River										
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"		A&Wc			FBC			FC	AgI	AgL
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River			A&Ww		FBC			FC	AgI	AgL
SR	Christopher Creek	Headwaters to confluence with Tonto Creek		A&Wc			FBC			FC	AgI	AgL
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/110°52'58"		A&Wc			FBC			FC		AgL
SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww		FBC			FC		AgL
SR	Conklin Creek	Headwaters to confluence with the Black River		A&Wc			FBC			FC	AgI	AgL
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41"/110°54'26"		A&Wc			FBC			FC		AgL
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River			A&Ww		FBC			FC		AgL
SR	Corduoy Creek	Headwaters to confluence with Fish Creek		A&Wc			FBC			FC	AgI	AgL
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork		A&Wc			FBC			FC	AgI	AgL
SR	Crescent Lake	33°54'38"/109°25'18"	Shallow	A&Wc			FBC			FC	AgI	AgL
SR	Deer Creek	Headwaters to confluence with the Black River, East Fork		A&Wc			FBC			FC		AgL
SR	Del Shay Creek	Headwaters to confluence with Gun Creek			A&Ww		FBC			FC		AgL
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46" /110°52'35"		A&Wc			FBC			FC		AgL
SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww		FBC			FC		AgL
SR	Dipping Vat	33°55'47"/109°25'31"	Igneous		A&Ww		FBC			FC		AgL

	Reservoir												
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC		AgL
SR	Fish Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Fish Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/111°25'10"		A&Wc				FBC			FC		AgL
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon		A&Wc				FBC			FC		AgL
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek			A&Ww			FBC			FC		AgL
SR	Greenback Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/111°00'15"		A&Wc				FBC			FC	AgI	AgL
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC	AgI	AgL
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Home Creek	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Horse Creek	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/110°50'07"		A&Wc				FBC			FC		AgL
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL

SR	Horton Creek	Headwaters to confluence with Tonto Creek		A&Wc				FBC			FC	AgI	AgL
SR	Houston Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Hunter Creek	Headwaters to confluence with Christopher Creek		A&Wc				FBC			FC		AgL
SR	LaBarge Creek	Headwaters to Canyon Lake			A&Ww			FBC			FC		
SR	Lake Sierra Blanca	33°52'25"/109°16'05"		A&Wc				FBC			FC	AgI	AgL
SR	Miami Wash	Headwaters to confluence with Pinal Creek				A&We			PBC				
SR	Mule Creek	Headwaters to confluence with Canyon Creek		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River		A&Wc				FBC			FC		AgL
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"		A&Wc				FBC			FC		AgL
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek			A&Ww			FBC			FC		AgL
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"				A&We			PBC				AgL
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash (Globe WWTP) to 33°26'55"/110°49' 25"					A&Wedw		PBC				
SR	Pinal Creek	From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/ 110°51'55"				A&We				PBC			AgL
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"					A&Wedw		PBC				
SR	Pinal Creek	From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"			A&Ww			FBC					
SR	Pinal Creek	From unnamed tributary to confluence with Salt River			A&Ww			FBC			FC		

SR	Pine Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/110°54'58"			A&Wc			FBC			FC	AgI	AgL
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww			FBC			FC	AgI	AgL
SR	Pole Corral Lake	33°30'38"/110°00'15"	Igneous		A&Ww			FBC			FC	AgI	AgL
SR	Pueblo Canyon Creek	Headwaters to confluence with unnamed tributary at 33°50'23"/110°51'37"			A&Wc			FBC			FC		AgL
SR	Pueblo Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Reevis Creek	Headwaters to confluence with Pine Creek			A&Ww			FBC			FC		
SR	Reservation Creek	Headwaters to confluence with the Black River			A&Wc			FBC			FC		AgL
SR	Reynolds Creek	Headwaters to confluence with Workman Creek			A&Wc			FBC			FC		AgL
SR	Roosevelt Lake	33°52'17"/111°00'17"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Russell Gulch	From Headwaters to confluence with Miami Wash				A&We			PBC				
SR	Rye Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Saguaro Lake	33°33'44"/111°30'55"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Salome Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC	AgI	AgL
SR	Salt House Lake	33°57'04"/109°20'11"	Igneous		A&Ww			FBC			FC		AgL
SR	Salt River	White Mountain Apache Reservation Boundary at 33°48'52"/110°31'33" to Roosevelt Lake			A&Ww			FBC			FC		AgL
SR	Salt River	Theodore Roosevelt Dam to 2 km below			A&Ww			FBC		DWS	FC	AgI	AgL

		Granite Reef Dam											
SR	Slate Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River			A&Wc			FBC			FC		AgL
SR	Spring Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork			A&Wc			FBC			FC		AgL
SR	Thomas Creek	Headwaters to confluence with Beaver Creek			A&Wc			FBC			FC		AgL
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River			A&Wc			FBC			FC		AgL
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/111°04'18"			A&Wc			FBC			FC	AgI	AgL
SR	Tonto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww			FBC			FC	AgI	AgL
SR	Turkey Creek	Headwaters to confluence with Rock Creek			A&Wc			FBC			FC		
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek			A&Wc			FBC			FC		AgL
SR	Willow Creek	Headwaters to confluence with Beaver Creek			A&Wc			FBC			FC		AgL
SR	Workman Creek	Headwaters to confluence with Reynolds Creek			A&Wc			FBC			FC	AgI	AgL
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek			A&Ww			FBC			FC	AgI	AgL
UG	Apache Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/109°51'45"			A&Wc			FBC			FC		AgL
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Bennett Wash	Headwaters to the Gila River				A&We			PBC				
UG	Bitter Creek	Headwaters to confluence with the Gila			A&Ww			FBC			FC		

		River											
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/109°12'14"		A&Wc				FBC			FC	AgI	AgL
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River			A&Ww			FBC			FC	AgI	AgL
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River			A&Ww			FBC		DWS	FC		AgL
UG	Buckelew Creek	Headwaters to confluence with Castle Creek		A&Wc				FBC			FC		AgL
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek		A&Wc				FBC			FC	AgI	AgL
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary			A&Ww			FBC			FC	AgI	AgL
UG	Cave Creek	Below Coronado National Forest boundary to New Mexico border			A&Ww			FBC			FC	AgI	AgL
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek		A&Wc				FBC			FC	AgI	AgL
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine			A&Ww			FBC			FC		AgL
UG	Chase Creek	Below the Phelps-Dodge Morenci Mine to confluence with San Francisco River				A&We			PBC		<u>FC</u>		
UG	Chitty Canyon Creek	Headwaters to confluence with Salt House Creek		A&Wc				FBC			FC		AgL
UG	Cima Creek	Headwaters to confluence with Cave Creek		A&Wc				FBC			FC		AgL
UG	Cluff Reservoir #1	32°48'55"/109°50'46"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Cluff Reservoir #3	32°48'21"/109°51'46"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Coleman	Headwaters to confluence with Campbell		A&Wc				FBC			FC		AgL

	Creek	Blue Creek												
UG	Dankworth Lake	32°43'13"/109°42'17"	Sedimentary	A&Wc				FBC				FC		
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/109°49'03"		A&Wc				FBC		DWS	FC		AgL	
UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash			A&Ww			FBC		DWS	FC		AgL	
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/109°29'43"		A&Wc				FBC		DWS	FC	AgI	AgL	
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww			FBC		DWS	FC	AgI	AgL	
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek		A&Wc				FBC			FC		AgL	
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/109°12'20"		A&Wc				FBC			FC		AgL	
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River			A&Ww			FBC			FC		AgL	
UG	East Whitetail	Headwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL	
UG	Emigrant Canyon	Headwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL	
UG	Evans Pond #1	32°49'19"/109°51'12"	Sedimentary		A&Ww			FBC			FC	AgI	AgL	
UG	Evans Pond #2	32°49'14"/109°51'09"	Sedimentary		A&Ww			FBC			FC	AgI	AgL	
UG	Fishhook Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL	
UG	Foote Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL	
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir		A&Wc				FBC		DWS	FC		AgL	
		Frye Mesa reservoir to terminus at			A&Ww									

UG	Frye Canyon Creek	Highline Canal.						FBC			FC		AgL
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"	Igneous	A&Wc				FBC		DWS	FC		
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek		A&Wc				FBC			FC		AgL
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary			A&Ww			FBC			FC	AgI	AgL
UG	Grant Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Judd Lake	33°51'15"/109°09'35"	Sedimentary	A&Wc				FBC			FC		
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Lanphier Canyon Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Headwaters to confluence with Dutch Blue Creek		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek			A&Ww			FBC			FC		AgL
UG	Little Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC		
UG	<del>George's</del> <u>Georges</u> Tank	33°51'24"/109°08'30"	Sedimentary	A&Wc				FBC			FC		AgL
UG	Luna Lake	33°49'50"/109°05'06"	Sedimentary	A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek		A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash			A&Ww			FBC			FC	AgI	AgL
UG	Markham Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Pigeon Creek	Headwaters to confluence with the Blue River			A&Ww			FBC			FC		AgL
UG	Raspberry Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		

UG	Roper Lake	32°45'23"/109°42'14"	Sedimentary		A&Ww			FBC			FC		
UG	San Francisco River	Headwaters to the New Mexico border			A&Wc			FBC			FC	AgI	AgL
UG	San Francisco River	New Mexico border to confluence with the Gila River			A&Ww			FBC			FC	AgI	AgL
UG	San Simon River	Headwaters to confluence with the Gila River				A&We			PBC				AgL
UG	Sheep Tank	32°46'14"/109°48'09"	Sedimentary		A&Ww			FBC			FC		AgL
UG	Smith Pond	32°49'15"/109°50'36"	Sedimentary		A&Ww			FBC			FC		
UG	Squaw Creek	Headwaters to confluence with Thomas Creek			A&Wc			FBC			FC		AgL
UG	Stone Creek	Headwaters to confluence with the San Francisco River			A&Wc			FBC			FC	AgI	AgL
UG	Strayhorse Creek	Headwaters to confluence with the Blue River			A&Wc			FBC			FC		
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek			A&Wc			FBC			FC		AgL
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River			A&Ww			FBC			FC		AgL
UG	Tinny Pond	33°47'49"/109°04'27"	Sedimentary		A&Ww			FBC			FC		AgL
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek			A&Wc			FBC			FC		AgL
VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"			A&Ww			FBC			FC	AgI	AgL
VR	American Gulch (EDW)	Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River					A&Wedw		PBC				
VR	Apache Creek	Headwaters to confluence with Walnut Creek			A&Ww			FBC			FC		AgL
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Aspen Creek	Headwaters to confluence with Granite			A&Ww			FBC			FC		

		Creek												
VR	Bar Cross Tank	35°00'41"/112°05'39"			A&Ww			FBC			FC		AgL	
VR	Barrata Tank	35°02'43"/112°24'21"			A&Ww			FBC			FC		AgL	
VR	Bartlett Lake	33°49'52"/111°37'44"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL	
VR	Beaver Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL	
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake				A&We			PBC				AgL	
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"				A&We			PBC				AgL	
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary					A&Wedw		PBC				AgL	
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL	
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/112°05'06"			A&Wc			FBC			FC		AgL	
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River			A&Ww			FBC			FC		AgL	
VR	Bonita Creek	Headwaters to confluence with Ellison Creek			A&Wc			FBC		<u>DWS</u>	FC			
VR	Bray Creek	Headwaters to confluence with Webber Creek			A&Wc			FBC			FC		AgL	
VR	Camp Creek	Headwaters to confluence with the <del>Sycamore Creek</del> Verde River			A&Ww			FBC			FC		AgL	
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC					
VR	Chase Creek	Headwaters to confluence with the East Verde River			A&Wc			FBC		DWS	FC			
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek			A&Wc			FBC			FC		AgL	
VR	Coffee Creek	Headwaters to confluence with Spring Creek			A&Ww			FBC			FC		AgL	

VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Dead Horse Lake	34°45'08"/112°00'42"	Shallow			A&Ww			FBC			FC	
VR	Deadman Creek	Headwaters to Horseshoe Reservoir				A&Ww			FBC			FC	AgL
VR	Del Monte Gulch	Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"				A&We			PBC				
VR	Del Monte Gulch (EDW)	City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46" to confluence with <del>Blowout Creek</del> Verde River					A&Wedw		PBC				
VR	Del Rio Dam Lake	34°48'55"/112°28'03"	Sedimentary			A&Ww			FBC			FC	AgL
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek				A&Ww			FBC			FC	AgL
VR	Dry Creek (EDW)	Sedona Ventures WWTP outfall at 34°50'02"/111°52'17" to 34°48'12"/111°52'48"						A&Wedw	PBC				
VR	Dude Creek	Headwaters to confluence with the East Verde River				A&Wc			FBC			FC	AgL
VR	East Verde River	Headwaters to confluence with Ellison Creek				A&Wc			FBC		DWS	FC	AgL
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River				A&Ww			FBC		DWS	FC	AgL
VR	Ellison Creek	Headwaters to confluence with the East Verde River				A&Wc			FBC			FC	AgL
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River				A&Ww			FBC			FC	AgL
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"				A&Ww			FBC		DWS	FC	
VR	Foxboro Lake	34°53'42"/111°39'55"				A&Ww			FBC			FC	AgL
VR	Fry Lake	35°03'45"/111°48'04"				A&Ww			FBC			FC	AgL
VR	Gap Creek	Headwaters to confluence with				A&Wc			FBC			FC	AgL

		Government Spring											
VR	Gap Creek	Below Government Spring to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Garrett Tank	35°18'57"/112°42'20"			A&Ww			FBC			FC		AgL
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"	Sedimentary		A&Wc			FBC		DWS	FC		
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"	Igneous		A&Wc			FBC		DWS	FC		
VR	Granite Basin Lake	34°37'01"/112°32'58"	Igneous		A&Wc			FBC			FC	AgI	AgL
VR	Granite Creek	Headwaters to Watson Lake			A&Wc			FBC			FC	AgI	AgL
VR	Granite Creek	Below Watson Lake to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"	Urban				A&Wedw		PBC		FC		
VR	Heifer Tank	35°20'27"/112°32'59"			A&Ww			FBC			FC		AgL
VR	Hells Canyon Tank	35°04'59"/112°24'07"	Igneous		A&Ww			FBC			FC		AgL
VR	Homestead Tank	35°21'24"/112°41'36"	Igneous		A&Ww			FBC			FC		AgL
VR	Horse Park Tank	34°58'15"/111°36'32"			A&Ww			FBC			FC		AgL
VR	Horseshoe Reservoir	34°00'25"/111°43'36"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
VR	Houston Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Huffer Tank	34°27'46"/111°23'11"			A&Ww			FBC			FC		AgL
VR	J.D. Dam Lake	35°04'02"/112°01'48"	Shallow		A&Wc			FBC			FC	AgI	AgL
VR	Jacks Canyon	Headwaters to Big Park WWTP outfall at 34°45'46"/ 111°45'51"					A&We		PBC				
VR	Jacks Canyon (EDW)	Below Big Park WWTP outfall to confluence with Dry Beaver Creek					A&Wedw		PBC				

VR	Lime Creek	Headwaters to Horseshoe Reservoir			A&Ww			FBC			FC		AgL
VR	Masonry Number 2 Reservoir	35°13'32"/112°24'10"			A&Wc			FBC			FC	AgI	AgL
VR	McLellan Reservoir	35°13'09"/112°17'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
VR	Meath Dam Tank	35°07'52"/112°27'35"			A&Ww			FBC			FC		AgL
VR	Mullican Place Tank	34°44'16"/111°36'10"	Igneous		A&Ww			FBC			FC		AgL
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/111°44'47"			A&Wc			FBC		DWS	FC	AgI	AgL
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Oak Creek, West Fork (OAW)	Headwaters to confluence with Oak Creek			A&Wc			FBC			FC		AgL
VR	Odell Lake	34°56'5"/111°37'53"	Igneous		A&Wc			FBC			FC		
VR	Peck's Lake	34°46'51"/112°02'01"	Shallow		A&Ww			FBC			FC	AgI	AgL
VR	Perkins Tank	35°06'42"/112°04'12"	Shallow		A&Wc			FBC			FC		AgL
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/111°26'49"			A&Wc			FBC		DWS	FC	AgI	AgL
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Red Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Reservoir #1	35°13'5"/111°50'09"	Igneous		A&Ww			FBC			FC		
VR	Reservoir #2	35°13'17"/111°50'39"	Igneous		A&Ww			FBC			FC		
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek			A&Ww			FBC			FC		AgL
VR	Scholze Lake	35°11'53"/112°00'37"	Igneous		A&Wc			FBC			FC		AgL
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/111°57'21"			A&Wc			FBC			FC	AgI	AgL
VR	Spring Creek	Below confluence with unnamed tributary			A&Ww			FBC			FC	AgI	AgL

		to confluence with Oak Creek											
VR	Steel Dam Lake	35°13'36"/112°24'54"	Igneous	A&Wc				FBC			FC		AgL
VR	Stehr Lake	34°22'01"/111°40'02"	Sedimentary		A&Ww			FBC			FC		AgL
VR	Stoneman Lake	34°46'47"/111°31'14"	Shallow	A&Wc				FBC			FC	AgI	AgL
VR	Sullivan Lake	34°51'42"/112°27'51"			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/111°57'31"		A&Wc				FBC			FC	AgI	AgL
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with Verde River at 34°04'42"/111°42'14" Fort McDowell Indian Reservation boundary at 33°39'19.8"/-111°37'42.7"			A&Ww			FBC			FC		AgL
VR	Tangle Creek	Headwaters to confluence with Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Trinity Tank	35°27'44"/112°48'01"			A&Ww			FBC			FC		AgL
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at 35°13'59"/ 111°48'35" to Volunteer Wash					A&Wedw		PBC				
VR	Verde River	From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam			A&Ww			FBC			FC	AgI	AgL
VR	Verde River	Below Bartlett Lake Dam to Salt River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Walnut Creek	Headwaters to confluence with Big Chino Wash			A&Ww			FBC			FC		AgL
VR	Watson Lake	34°34'58"/112°25'26"	Igneous		A&Ww			FBC			FC	AgI	AgL
VR	Webber Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC		AgL
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon		A&Wc				FBC			FC		AgL

VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Wet Beaver Creek	Headwaters to unnamed springs at 34°41'17"/111°34'34"			A&Wc			FBC			FC	AgI	AgL
VR	Wet Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek			A&Ww			FBC			FC	AgI	AgL
VR	Whitehorse Lake	35°06'59"/112°00'48"	Igneous		A&Wc			FBC		DWS	FC	AgI	AgL
VR	Williamson Valley Wash	Headwaters to confluence with Mint Wash								PBC			AgL
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream			A&Ww			FBC			FC		AgL
VR	Williamson Valley Wash	From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash								PBC			AgL
VR	Williscraft Tank	35°11'22"/112°35'40"			A&Ww			FBC			FC		AgL
VR	Willow Creek	Above Willow Creek Reservoir			A&Wc			FBC			FC		AgL
VR	Willow Creek	Below Willow Creek Reservoir to confluence with Granite Creek			A&Ww			FBC			FC		AgL
VR	Willow Creek Reservoir	34°36'17"/112°26'19"	Shallow		A&Ww			FBC			FC	AgI	AgL
VR	Willow Valley Lake	34°41'08"/111°20'02"	Sedimentary		A&Ww			FBC			FC		AgL

**ARTICLE 2. ~~REPEALED~~ WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS**

**R18-11-201. ~~Repealed~~ Definitions**

The following terms apply to this Article:

1. “Acute toxicity” means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. “Agricultural irrigation AZ (AgI AZ)” means the use of a non-WOTUS protected surface water for crop irrigation.
3. “Agricultural livestock watering AZ (AgL AZ)” means the use of a non-WOTUS protected surface water as a water supply for consumption by livestock.

4. “Aquatic and wildlife AZ (cold water) (A&Wc AZ)” means the use of a non-WOTUS protected surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
5. “Aquatic and wildlife AZ (warm water) (A&Ww AZ)” means the use of a non-WOTUS protected surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
6. “Assimilative capacity” means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
7. “Complete Mixing” means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
8. “Criteria” means elements of water quality standards expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
9. “Critical flow conditions of the discharge” means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone’s receiving water as follows:
  - a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
  - b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
  - c. For human health-based water quality standard criteria, the discharge flow critical condition is the long-term arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
10. “Critical flow conditions of the receiving water” means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
  - a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
  - b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
  - c. For human health-based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
11. “Designated use” means a use specified on the Protected Surface Waters List for a non-WOTUS protected surface water.
12. “Domestic water source AZ (DWS AZ)” means the use of a non-WOTUS protected surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.

13. “Fish consumption AZ (FC AZ)” means the use of a non-WOTUS protected surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
14. “Full-body contact AZ (FBC AZ)” means the use of a non-WOTUS protected surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely, and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
15. “Geometric mean” means the nth root of the product of n items or values. The geometric mean is calculated using the following formula:

$$GM_y = \sqrt[n]{(Y_1)(Y_2)(Y_3)(Y_n)}$$

16. “Hardness” means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO<sub>3</sub>) in milligrams per liter.
17. “Mixing zone” means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
18. “Non-WOTUS protected surface water” means a protected surface water designated in Table A of R18-11-216 or added to the PSWL by an emergency action authorized by A.R.S. §49-221(G)(7) that is not a WOTUS.
19. “Oil” means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
20. “Partial-body contact AZ (PBC AZ)” means the recreational use of a non-WOTUS protected surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and, sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
21. “Pollutant” means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance.
22. “Practical quantitation limit” means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
23. “Recharge Project” means a facility necessary or convenient to obtain, divert, withdraw, transport, exchange, deliver, treat, or store water to infiltrate or reintroduce that water into the ground.
24. “Toxic” means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.

25. “Urban lake” means a manmade lake within an urban landscape.
26. “Wastewater” does not mean:
  - a. Stormwater.
  - b. Discharges authorized under the De Minimus General Permit.
  - c. Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or
  - d. Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
27. “Wetland” means, for the purposes of non-WOTUS protected surface waters, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
28. “WOTUS” means waters of the state that are also navigable waters as defined by Section 502(7) of the Clean Water Act.
29. “WOTUS protected surface water” means a protected surface water that is a WOTUS.
30. “Zone of initial dilution” means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

**R18-11-202. ~~Repealed~~ Applicability**

- A.** The water quality standards prescribed in this Article apply to non-WOTUS protected surface waters.
- B.** The water quality standards prescribed in this Article do not apply to the following:
  1. A waste treatment system, including an impoundment, pond, lagoon, or constructed wetland that is part of the waste treatment system;
  2. A man-made surface impoundment and any associated ditch and conveyance used in the extraction, beneficiation, or processing of metallic ores including:
    - a. A pit,
    - b. Pregnant leach solution pond
    - c. Raffinate pond,
    - d. Tailing impoundment,
    - e. Decant pond,
    - f. Pond or a sump in a mine put associated with dewatering activity,
    - g. Pond holding water that has come into contact with a process or product that is being held for recycling,
    - h. Spill or catchment pond, or
    - i. A pond used for onsite remediation
  3. A man-made cooling pond that is neither created in a surface water nor results from the impoundment of a surface water; or
  4. A surface water located on tribal lands.

5. WOTUS Protected Surface Waters

**R18-11-203. ~~Repealed~~ Designated Uses for Non-WOTUS Protected Surface Waters**

- A.** The designated uses for specific non-WOTUS protected surface waters are listed in the Protected Surface Waters List in this article. The designated uses that may be assigned to a non-WOTUS protected surface water are:
1. Full-body contact AZ.
  2. Partial-body contact AZ.
  3. Domestic water source AZ.
  4. Fish consumption AZ.
  5. Aquatic and wildlife AZ (cold water).
  6. Aquatic and wildlife AZ (warm water).
  7. Agricultural irrigation AZ, and
  8. Agricultural livestock watering AZ.
- B.** Numeric water quality criteria to maintain and protect water quality for the designated uses assigned to non-WOTUS protected surface waters are prescribed in R18-11-215. Narrative water quality standards to protect non-WOTUS protected surface waters are prescribed in R18-11-214.
- C.** If a non-WOTUS protected surface water has more than one designated use listed in the Protected Surface Waters List, the most stringent water quality criterion applies.
- D.** The Director shall revise the designated uses of a non-WOTUS protected surface water if water quality improvements result in a level of water quality that permits a use that is not currently listed as a designated use in the Protected Surface Waters List.
- E.** The Director may remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria through a rulemaking action for any of the following reasons:
1. A naturally-occurring pollutant concentration prevents the attainment of the use;
  2. A human-caused condition or source of pollution prevents the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
  3. A dam, diversion, or other type of hydrologic modification precludes the attainment of the use, and it is not feasible to restore the non-WOTUS protected surface water to its original condition or to operate the modification in a way that would result in attainment of the use;
  4. A physical condition related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, precludes attainment of an aquatic life designated use.

**R18-11-204. ~~Repealed~~ Interim, Presumptive Designated Uses**

- A.** The following water quality standards apply to a non-WOTUS protected surface water that is not listed on the Protected Surface Waters List but is added on an emergency basis pursuant to A.R.S. § 49-221(G)(7):

1. The aquatic and wildlife AZ (cold water use applies to a non-WOTUS protected surface water above 5000 feet in elevation;
2. The aquatic and wildlife AZ (warm water) applies to a non-WOTUS protected surface water below 5000 feet in elevation;
3. The full-body contact AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
4. The partial-body contact AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans in a way that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
5. The fish consumption AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
6. The domestic water source AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used by humans as a source of potable water.
7. The agricultural irrigation AZ use applies to a non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used for crop irrigation.
8. The agricultural livestock watering AZ use applies to any non-WOTUS protected surface water if the Director makes a determination that the non-WOTUS protected surface water is used as a water supply for consumption by livestock.

**R18-11-205. ~~Repealed~~ Analytical Methods**

- A.** A person conducting an analysis of a sample taken to determine compliance with a water quality standard shall use an analytical method prescribed in A.A.C. R9-14-610 or an alternative method approved under A.A.C. R9-14-610(C).
- B.** A test result from a sample taken to determine compliance with a water quality standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

**R18-11-206. ~~Repealed~~ Mixing Zones**

- A.** The Director may establish a mixing zone for a point source discharge to a non-WOTUS protected surface water as a condition of an individual AZPDES permit on a pollutant-by-pollutant basis. A mixing zone is prohibited where there is no water for dilution, or as prohibited pursuant to subsection (H).
- B.** The owner or operator of a point source seeking the establishment of a mixing zone shall submit a request to the Director for a mixing zone as part of an application for an AZPDES permit. The request shall include:

1. An identification of the pollutant for which the mixing zone is requested;
  2. A proposed outfall design;
  3. A definition of the boundary of the proposed mixing zone. For purposes of this subsection, the boundary of a mixing zone is where complete mixing occurs; and
  4. A complete and detailed description of the existing physical, biological, and chemical conditions of the receiving water and the predicted impact of the proposed mixing zone on those conditions. The description shall also address the factors listed in subsection (D) that the Director must consider when deciding to grant or deny a request and shall address the mixing zone requirements in subsection (H).
- C.** The Director shall consider the following factors when deciding whether to grant or deny a request for a mixing zone:
1. The assimilative capacity of the receiving water;
  2. The likelihood of adverse human health effects;
  3. The location of drinking water plant intakes and public swimming areas;
  4. The predicted exposure of biota and the likelihood that resident biota will be adversely affected;
  5. Bioaccumulation;
  6. Whether there will be acute toxicity in the mixing zone, and, if so, the size of the zone of initial dilution;
  7. The known or predicted safe exposure levels for the pollutant for which the mixing zone is requested;
  8. The size of the mixing zone;
  9. The location of the mixing zone relative to biologically sensitive areas in the surface water;
  10. The concentration gradient of the pollutant within the mixing zone;
  11. Sediment deposition;
  12. The potential for attracting aquatic life to the mixing zone; and
  13. The cumulative impacts of other mixing zones and other discharges to the surface water.
- D.** Director determination.
1. The Director shall deny a request to establish a mixing zone if an applicable water quality standard will be violated outside the boundaries of the proposed mixing zone.
  2. If the Director approves the request to establish a mixing zone, the Director shall establish the mixing zone as a condition of an AZPDES permit. The Director shall include any mixing zone condition in the AZPDES permit that is necessary to protect human health and the designated uses of the surface water.
- E.** Any person who is adversely affected by the Director's decision to grant or deny a request for a mixing zone may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.
- F.** The Director shall reevaluate a mixing zone upon issuance, reissuance, or modification of the AZPDES permit for the point source or a modification of the outfall structure.
- G.** Mixing zone requirements.
1. A mixing zone shall be as small as practicable in that it shall not extend beyond the point in the waterbody at which complete mixing occurs under the critical flow conditions of the discharge and of the receiving water.

2. The total horizontal area allocated to all mixing zones on a lake shall not exceed 10 percent of the surface area of the lake.
3. Adjacent mixing zones in a lake shall not overlap or be located closer together than the greatest horizontal dimension of the largest mixing zone.
4. The design of any discharge outfall shall maximize initial dilution of the wastewater in a surface water.
5. The size of the zone of initial dilution in a mixing zone shall prevent lethality to organisms passing through the zone of initial dilution. The mixing zone shall prevent acute toxicity and lethality to organisms passing through the mixing zone.

**H.** The Director shall not establish a mixing zone in an AZPDES permit for the following persistent, bioaccumulative pollutants:

1. Chlordane,
2. DDT and its metabolites (DDD and DDE),
3. Dieldrin,
4. Dioxin,
5. Endrin,
6. Endrin aldehyde,
7. Heptachlor,
8. Heptachlor epoxide,
9. Lindane,
10. Mercury,
11. Polychlorinated biphenyls (PCBs), and
12. Toxaphene.

**R18-11-207. ~~Repealed~~ Natural background**

Where the concentration of a pollutant exceeds a water quality standard and the exceedance is caused solely by naturally occurring conditions, the exceedance shall not be considered a violation of the water quality standard.

**R18-11-208. ~~Repealed~~ Schedules of Compliance**

A compliance schedule in an AZPDES permit shall require the permittee to comply with a discharge limitation based upon a new or revised water quality standard as soon as possible to achieve compliance. The permittee shall demonstrate that the point source cannot comply with a discharge limitation based upon the new or revised water quality standard through the application of existing water pollution control technology, operational changes, or source reduction. In establishing a compliance schedule, the Director shall consider:

1. How much time the permittee has already had to meet any effluent limitations under a prior permit;
2. The extent to which the permittee has made good faith efforts to comply with the effluent limitations and other requirements in a prior permit;
3. Whether treatment facilities, operations, or measures must be modified to meet the effluent limitations;

4. How long any necessary modifications would take to implement; and
5. Whether the permittee would be expected to use the same treatment facilities, operations or other measures to meet the effluent limitations as it would have used to meet the effluent limitations in a prior permit.

**R18-11-209. Repealed Variances**

- A.** Upon request, the Director may establish, by rule, a discharger-specific or water segment(s)-specific variance from a water quality standard if requirements pursuant to this Section are met.
- B.** A person who requests a variance must demonstrate all of the following information:
1. Identification of the specific pollutant and water quality standard for which a variance is sought.
  2. Identification of the receiving surface water segment or segments to which the variance would apply.
  3. A detailed discussion of the need for the variance, including the reasons why compliance with the water quality standard cannot be achieved over the term of the proposed variance, and any other useful information or analysis to evaluate attainability.
  4. A detailed description of proposed interim discharge limitations and pollutant control activities that represent the highest level of treatment achievable by a point source discharger or dischargers during the term of the variance.
  5. Documentation that the proposed term is only as long as necessary to achieve compliance with applicable water quality standards.
  6. Documentation that is appropriate to the type of designated use to which the variance would apply as follows:
    - a. For a water quality standard variance documentation must include a demonstration of at least one of the following factors that preclude attainment of the use during the term of the variance:
      - i. Naturally occurring pollutant concentrations prevent attainment of the use;
      - ii. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met;
      - iii. That human-caused conditions or sources of pollution prevent the attainment of the water quality standard for which the variance is sought and either (1) it is not possible to remedy the conditions or sources of pollution or (2) remedying the human-caused conditions would cause more environmental damage to correct than to leave in place;
      - iv. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification n a way that would result in the attainment of the use;
      - v. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;



- I. The Director shall periodically, but not more than every 5 years, reevaluate whether each variance continues to represent the highest attainable condition. Comment on the variance shall be considered regarding whether the variance continues to represent the highest attainable condition during each rulemaking for this Article. If the Director determines that the requirements of the variance do not represent the highest attainable condition, then the Director shall modify or repeal the variance during the rulemaking.
- J. If the variance is modified by rulemaking, the requirements of the variance shall represent the highest attainable condition at the time of initial adoption of the variance, or the highest attainable condition identified during the current reevaluation, whichever is more stringent.
- K. Upon expiration of a variance, point source dischargers shall comply with the water quality standard.

**R18-2-210. ~~Repealed~~ Site Specific Standards**

- A. The Director shall adopt a site-specific standard by rule.
- B. The Director may adopt a site-specific standard based upon a request or upon the Director's initiative for any of the following reasons:
  - 1. Local physical, chemical, or hydrological conditions of a non-WOTUS protected surface water such as pH, hardness, fate and transport, or temperature alters the biological availability or toxicity of a pollutant;
  - 2. The sensitivity of resident aquatic organisms that occur in a non-WOTUS protected surface water to a pollutant differs from the sensitivity of the species used to derive the numeric water quality standards to protect aquatic life in R18-2-215;
  - 3. Resident aquatic organisms that occur in a non-WOTUS protected surface water represent a narrower mix of species than those in the dataset used by ADEQ to derive numeric water quality standards to protect aquatic life in R18-2-215;
  - 4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in R18-2-215. "Natural background" means the concentration of a pollutant in a non-WOTUS protected surface water due only to non-anthropogenic sources; or
  - 5. Other factors or combination of factors that upon review by the Director warrant changing a numeric water quality standard for a non-WOTUS protected surface water.
- C. Site-specific standard by request. To request that the Director adopt a site-specific standard, a person must conduct a study to support the development of a site-specific standard using a scientifically defensible procedure.
  - 1. Before conducting the study, a person shall submit a study outline to the Director for approval that contains the following elements:
    - a. Identifies the pollutant;
    - b. Describes the reach's boundaries;
    - c. Describes the hydrologic regime of the waterbody;
    - d. Describes the scientifically defensible procedure, which can include relevant aquatic life studies, ecological studies, laboratory tests, biological translators, fate and transport models, and risk analyses;

- e. Describes and compares the taxonomic composition, distribution and density of the aquatic biota within the reach to a reference reach and describes the basis of any major taxonomic differences;
- f. Describes the pollutant's effect on the affected species or appropriate surrogate species and on the other designated uses listed for the reach;
- g. Demonstrates that all designated uses are protected; and
- h. A person seeking to develop a site-specific standard based on natural background may use statistical or modeling approaches to determine natural background concentration.

**R18-11-211. ~~Repealed~~ Enforcement of Non-permitted Discharges to Non-WOTUS Protected Surface Waters**

- A.** The Department may establish a numeric water quality standard at a concentration that is below the practical quantitation limit. Therefore, in enforcement actions pursuant to subsection (B), the water quality standard is enforceable at the practical quantitation limit.
- B.** Except for chronic aquatic and wildlife criteria, for non-permitted discharge violations, the Department shall determine compliance with numeric water quality standard criteria from the analytical result of a single sample, unless additional samples are required under this article. For chronic aquatic and wildlife criteria, compliance for non-permitted discharge violations shall be determined from the geometric mean of the analytical results of the last four samples taken at least 24 hours apart. For the purposes of this Section, a "non-permitted discharge violation" does not include a discharge regulated under an AZPDES permit.

**R18-11-212. ~~Repealed~~ Statements of Intent and Limitations on the Reach of Article 2**

- A.** Nothing in this Article prohibits fisheries management activities by the Arizona Game and Fish Department or the U.S. Fish and Wildlife Service. This Article does not exempt fish hatcheries from AZPDES permit requirements.
- B.** Nothing in this Article prevents the routine physical or mechanical maintenance of canals, drains, and the urban lakes identified as non-WOTUS protected surface waters on the Protected Surface Waters List. Physical or mechanical maintenance includes dewatering, lining, dredging, and the physical, biological, or chemical control of weeds and algae. Increases in turbidity that result from physical or mechanical maintenance activities are permitted in canals, drains, and the urban lakes identified on the Protected Surface Waters List.
- C.** Increases in turbidity that result from the routine physical or mechanical maintenance of a dam or flood control structure are not violations of this Article.
- D.** Nothing in this Article requires the release of water from a dam or a flood control structure.

**R18-11-213. ~~Repealed~~ Procedures for Determining Economic, Social, and Environmental Cost and Benefits.**

- A.** The Director shall perform an economic, social, and environmental cost and benefits analysis that shows the benefits outweigh the costs before conducting any of the following rulemaking actions:
  - 1. Adopting a water quality standard that applies to non-WOTUS protected surface waters at a particular level or for a particular water category of non-WOTUS protected surface waters;

2. Adding a non-WOTUS protected surface water to the Protected Surface Waters List when the conditions of A.R.S. § 49-221(G)(4) apply; or
3. Removing a non-WOTUS protected surface water from the Protected Surface Waters List when the conditions of A.R.S. § 49-221(G)(6) apply.

**B.** The economic, social, and environmental cost and benefit analysis must include:

1. A justification of the valuation methodology used to quantify the costs or benefits of the rulemaking action;
2. A reference to any study relevant to the economic, social, and environmental cost and benefit analysis that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of the costs and benefits of the rulemaking action;
3. A description of any data on which an economic, social, and environmental cost and benefits analysis is based and an explanation of how the data was obtained and why the data is acceptable data.
4. A description of the probable impact of the rulemaking on any existing AZPDES permits that are impacted by the rulemaking action;
5. A description of the probable amount of additional AZPDES permits that will be required for known and ongoing point-source discharges after the rulemaking is completed that otherwise would not have been required if the Director did not undertake the rulemaking action; and
6. The administrative and other costs to ADEQ associated with the proposed rulemaking.

**C.** The Director shall publish a copy of the economic, social, and environmental cost and benefits analysis to the agency website prior to filing any rulemaking materials during any of the rulemaking actions listed in subsection (A) of this rule.

**D.** If for any reason enough data is not reasonably available to comply with the requirements of subsection (B) of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

**E.** The Director is not required to prepare the economic, social, and environmental cost and benefits analysis required by this rule when:

1. Adding or removing a WOTUS-protected surface water from the Protected Surface Waters List; or
2. Adding a water to the Protected Surface Waters List on an emergency basis pursuant to A.R.S. § 49-221(G)(7).

**R18-11-214. ~~Repealed~~ Narrative Water Quality Standards for Non-WOTUS Protected Surface Waters**

**A.** A non-WOTUS protected surface water shall not contain pollutants in amounts or combinations that:

1. Settle to form bottom deposits that inhibit or prohibit the habitation, growth, or propagation of aquatic life;
2. Cause objectionable odor in the area in which the non-WOTUS protected surface water is located;
3. Cause off-taste or odor in drinking water;
4. Cause off-flavor in aquatic organisms;
5. Are toxic to humans, animals, plants, or other organisms;
6. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses;

7. Cause or contribute to a violation of an aquifer water quality standard prescribed in R18-11-405 or R18-11-406; or

8. Change the color of the non-WOTUS protected surface water from natural background levels of color.

**B.** A non-WOTUS protected surface water shall not contain oil, grease, or any other pollutant that floats as debris, foam, or scum; or that causes a film or iridescent appearance on the surface of the water; or that causes a deposit on a shoreline, bank, or aquatic vegetation. The discharge of lubricating oil or gasoline associated with the normal operation of a recreational watercraft is not a violation of this narrative standard

**C.** A non-WOTUS protected surface water shall not contain a discharge of suspended solids in quantities or concentrations that interfere with the treatment processes at the nearest downstream potable water treatment plant or substantially increase the cost of handling solids produced at the nearest downstream potable water treatment plant.

**R18-11-215. Numeric Water Quality Standards for Non-WOTUS Protected Surface Waters**

**A.** *E. coli* bacteria. The following water quality standards for *Escherichia coli* (*E. coli*) are expressed in colony-forming units per 100 milliliters of water (cfu / 100 ml) or as a Most Probable Number (MPN):

<u><i>E. coli</i></u>	<u>FBC AZ</u>	<u>PBC AZ</u>
<u>Geometric mean (minimum of four samples in 30 days)</u>	<u>126</u>	<u>126</u>
<u>Statistical threshold value</u>	<u>410</u>	<u>576</u>

**B.** pH. The following water quality standards for non-WOTUS protected surface waters pH are expressed in standard units:

<u>pH</u>	<u>DWS AZ</u>	<u>FBC AZ, PBC AZ, A&amp;Ww AZ, A&amp;Wc AZ</u>	<u>AgI AZ</u>	<u>AgL AZ</u>
<u>Maximum</u>	<u>9.0</u>	<u>9.0</u>	<u>9.0</u>	<u>9.0</u>
<u>Minimum</u>	<u>5.0</u>	<u>6.5</u>	<u>4.5</u>	<u>6.5</u>

**C.** The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

<u>A&amp;Ww AZ</u>	<u>A&amp;Wc AZ</u>
<u>3.0° C</u>	<u>1.0° C</u>

**D.** Suspended sediment concentration.

1. The following water quality standards for suspended sediment concentration, expressed in milligrams per liter (mg/L), are expressed as a median value determined from a minimum of four samples collected at least seven days apart:
2. The Director shall not use the results of a suspended sediment concentration sample collected during or within 48 hours after a local storm event to determine the median value.

<u>A&amp;Wc AZ</u>	<u>A&amp;Ww AZ</u>
<u>25</u>	<u>80</u>

**E.** Dissolved oxygen. A non-WOTUS protected surface water meets the water quality standard for dissolved oxygen when either:

1. The percent saturation of dissolved oxygen is equal to or greater than 90 percent, or
2. The single sample minimum concentration for the designated use, as expressed in milligrams per liter (mg/L) is as follows:

<u>Designated Use</u>	<u>Single sample minimum concentration in mg/L</u>
<u>A&amp;Ww AZ</u>	<u>6.0</u>
<u>A&amp;Wc AZ</u>	<u>7.0</u>

The single sample minimum concentration is the same for the designated use in a lake, but the sample must be taken from a depth no greater than one meter.

**F.** The tables in this subsection prescribe water quality criteria for individual pollutants by designated use:

**Table 1. Water Quality Criteria by Designated Use (see footnote)**

<u>Parameter</u>	<u>CAS</u>	<u>DWS AZ</u>	<u>FC AZ</u>	<u>FBC AZ</u>	<u>PBC AZ</u>	<u>A&amp;Wc AZ</u>	<u>A&amp;Wc AZ</u>	<u>A&amp;Ww AZ</u>	<u>A&amp;Ww AZ</u>	<u>Aql AZ</u>	<u>Aql</u>
	<u>NUMBER</u>	<u>(µg/L)</u>	<u>(µg/L)</u>	<u>(µg/L)</u>	<u>(µg/L)</u>	<u>Acute</u>	<u>Chronic</u>	<u>Acute</u>	<u>Chronic</u>	<u>(µg/L)</u>	<u>AZ</u>
						<u>(µg/L)</u>	<u>(µg/L)</u>	<u>(µg/L)</u>	<u>(µg/L)</u>	<u>(µg/L)</u>	<u>(µg/L)</u>

Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550		
Acrolein	107028	3.5	1.9	467	467	3	3	3	3		
Acrylonitrile	107131	0.06	0.2	3	37,333	3,800	250	3,800	250		
Alachlor	15972608	2		9,333	9,333	2,500	170	2,500	170		
Aldrin	309002	0.002	0.00005	0.08	28	3		3		0.003	See (b)
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)									
Ammonia	7664417					See (e) & Tables 11 (present) & 14 (absent)	See (e) & Tables 13 (present) & 17 (absent)	See (e) & Tables 12 (present) & 15 (absent)	See (e) & Tables 13 (present) & 16 (absent)		
Anthracene	120127	2,100	74	280,000	280,000						
Antimony	7440360	6 T	640 T	747 T	747 T	88 D	30 D	88 D	30 D		
Arsenic	7440382	10 T	80 T	30 T	280 T	340 D	150 D	340 D	150 D	2,000 T	200 T
Asbestos	1332214	See (a)									
Atrazine	1912249	3		32,667	32,667						
Barium	7440393	2,000 T		98,000 T	98,000 T						
Benz(a)anthracene	56553	0.005	0.02	0.2	0.2						
Benzene	71432	5	140	93	3,733	2,700	180	2,700	180		
Benzo[b]fluoranthene Benzfluoranthene	205992	0.005	0.02	1.9	1.9						
Benzidine	92875	0.0002	0.0002	0.01	2,800	1,300	89	1,300	89	0.01	0.01
Benzo(a)pyrene	50328	0.2	0.02	0.2	0.2						
Benzo(k)fluoranthene	207089	0.005	0.02	1.9	1.9						
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T	65 D	5.3 D	65 D	5.3 D		
Beta particles and photon emitters		4 millirems /year See (i)									
Bis(2-chloroethyl) ether	111444	0.03	0.5	1	1	120,000	6,700	120,000	6,700		
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333						
Boron	7440428	1,400 T		186,667 I	186,667 I					1,000 T	
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667						

4-Bromophenyl phenyl ether	101553					180	14	180	14		
Bromoform	75252	TTHM See (g)	133	180	18.667	15.000	10.000	15.000	10.000		
Bromomethane	74839	9.8	299	1.307	1.307	5.500	360	5.500	360		
Butyl benzyl phthalate	85687	1.400	386	186.667	186.667	1.700	130	1.700	130		
Cadmium	7440439	5 T	84 T	700 T	700 T	See (d) & Table 2	See (d) & Table 3	See (d) & Table 2	See (d) & Table 3	50	50
Carbaryl	63252					2.1	2.1	2.1	2.1		
Carbofuran	1563662	40		4.667	4.667	650	50	650	50		
Carbon tetrachloride	56235	5	2	11	980	18.000	1.100	18.000	1.100		
Chlordane	57749	2	0.0008	4	467	2.4	0.004	2.4	0.2		
Chlorine (total residual)	7782505	4.000		4000	4000	19	11	19	11		
Chlorobenzene	108907	100	1.553	18.667	18.667	3.800	260	3.800	260		
2-Chloroethyl vinyl ether	110758					180.000	9.800	180.000	9.800		
Chloroform	67663	TTHM See (g)	470	230	9.333	14.000	900	14.000	900		
p-Chloro-m-cresol	59507					15	4.7	15	4.7		
Chloromethane	74873					270.000	15.000	270.000	15.000		
beta-Chloronaphthalene	91587	560	317	74.667	74.667						
2-Chlorophenol	95578	35	30	4.667	4.667	2.200	150	2.200	150		
Chloropyrifos	2921882	21		2.800	2.800	0.08	0.04	0.08	0.04		
Chromium III	16065831		75.000 I	1.400.000 I	1.400.000 I	See (d) & Table 4					
Chromium VI	18540299	21 T	150 T	2.800 T	2.800 T	16 D	11 D	16 D	11 D		
Chromium (Total)	7440473	100 T								1.000	1.000
Chrysene	218019	0.005	0.02	19	19						
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	5,000 T	500 T			
Cyanide (as free cyanide)	57125	200 T	16.000 I	18.667 T	18.667 T	22 T	5.2 T	41 T	9.7 T		200 T
Dalapon	75990	200	8.000	28.000	28.000						
DDT and its breakdown products	50293	0.1	0.0002	14	467	1.1	0.001	1.1	0.001	0.001	0.001
Demeton	8065483						0.1		0.1		

Diazinon	333415					0.17	0.17	0.17	0.17		
Dibenz (ah) anthracene	53703	0.005	0.02	1.9	1.9						
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18.667						
1,2-Dibromo-3-chloropropane	96128	0.2		2.800	2.800						
1,2-Dibromoethane	106934	0.05		8.400	8.400						
Dibutyl phthalate	84742	700	899	93.333	93.333	470	35	470	35		
1,2-Dichlorobenzene	95501	600	205	84.000	84.000	790	300	1,200	470		
1,3-Dichlorobenzene	541731					2,500	970	2,500	970		
1,4-Dichlorobenzene	106467	75	5755	373.333	373.333	560	210	2,000	780		
3,3'-Dichlorobenzidine	91941	0.08	0.03	3	3						
1,2-Dichloroethane	107062	5	37	15	186.667	59.000	41.000	59.000	41.000		
1,1-Dichloroethylene	75354	7	7.143	46.667	46.667	15.000	950	15.000	950		
1,2-cis-Dichloroethylene	156592	70		70	70						
1,2-trans-Dichloroethylene	156605	100	10.127	18.667	18.667	68.000	3.900	68.000	3.900		
Dichloromethane	75092	5	593	190	56.000	97.000	5.500	97.000	5.500		
2,4-Dichlorophenol	120832	21	59	2.800	2.800	1,000	88	1,000	88		
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9.333	9.333						
1,2-Dichloropropane	78875	5	17.518	84.000	84.000	26.000	9.200	26.000	9.200		
1,3-Dichloropropene	542756	0.7	42	420	28.000	3.000	1.100	3.000	1.100		
Dieldrin	60571	0.002	0.00005	0.09	47	0.2	0.06	0.2	0.06	0.003	See (b)
Diethyl phthalate	84662	5.600	8.767	746.667	746.667	26.000	1.600	26.000	1.600		
Di (2-ethylhexyl) adipate	103231	400		560.000	560.000						
Di (2-ethylhexyl) phthalate	117817	6	3	100	18.667	400	360	400	360		
2,4-Dimethylphenol	105679	140	171	18.667	18.667	1,000	310	1,000	310		
Dimethyl phthalate	131113					17.000	1,000	17.000	1,000		
4,6-Dinitro-o-cresol	534521	28	582	3.733	3.733	310	24	310	24		
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867	110	9.2	110	9.2		
2,4-Dinitrotoluene	121142	14	421	1,867	1,867	14.000	860	14.000	860		
2,6-Dinitrotoluene	606202	0.05		2	3.733						
Di-n-octyl phthalate	117840	2.800		373.333	373.333						
Dinoseb	88857	7		933	933						

1,2-Diphenylhydrazine	122667	0.04	0.2	1.8	1.8	130	11	130	11		
Diquat	85007	20		2.053	2.053						
Endosulfan sulfate	1031078	42	18	5.600	5.600	0.2	0.06	0.2	0.06		
Endosulfan (Total)	115297	42	18	5.600	5.600	0.2	0.06	0.2	0.06		
Endothall	145733	100		18.667	18.667						
Endrin	72208	2	0.06	280	280	0.09	0.04	0.09	0.04	0.004	0.004
Endrin aldehyde	7421934	2				0.09	0.04	0.09	0.04		
Ethylbenzene	100414	700	2.133	93.333	93.333	23.000	1.400	23.000	1.400		
Fluoranthene	206440	280	28	37.333	37.333	2.000	1.600	2.000	1.600		
Fluorene	86737	280	1.067	37.333	37.333						
Fluoride	7782414	4.000		140.000	140.000						
Glyphosate	1071836	700	266.667	93.333	93.333						
Guthion	86500						0.01		0.01		
Heptachlor	76448	0.4	0.00008	0.4	467	0.5	0.004	0.5	0.004		
Heptachlor epoxide	1024573	0.2	0.00004	0.2	12	0.5	0.004	0.5	0.004		
Hexachlorobenzene	118741	1	0.0003	1	747	6	3.7	6	3.7		
Hexachlorobutadiene	87683	0.4	18	18	187	45	8.2	45	8.2		
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.22	7.467	1.600	130	1.600	130		
Hexachlorocyclohexane beta	319857	0.02	0.02	0.78	560	1.600	130	1.600	130		
Hexachlorocyclohexane delta	319868					1.600	130	1.600	130		
Hexachlorocyclohexane gamma (lindane)	58899	0.2	1.8	280	280	1	0.08	1	0.28		
Hexachlorocyclopentadiene	77474	50	580	9.800	9.800	3.5	0.3	3.5	0.3		
Hexachloroethane	67721	2.5	3.3	100	933	490	350	490	350		
Hydrogen sulfide	7783064						2 See (c)		2 See (c)		
Indeno (1,2,3-cd) pyrene	193395	0.05	0.49	1.9	1.9						
Iron	7439896						1,000 D		1,000 D		
Isophorone	78591	37	961	1.500	186.667	59.000	43.000	59.000	43.000		
Lead	7439921	15 T		15 T	15 T	See (d) & Table 6	10.000 I	100 T			
Malathion	121755	140		18.667	18.667		0.1		0.1		
Manganese	7439965	980		130.667	130.667					10.000	
Mercury	7439976	2 T		280 T	280 T	2.4 D	0.01 D	2.4 D	0.01 D		10 T

Methoxychlor	72435	40		4,667	4,667		0.03		0.03		
Methylmercury	22967926		0.3 mg/ kg								
Mirex	2385855	1		187	187		0.001		0.001		
Naphthalene	91203	140	1,524	18,667	18,667	1,100	210	3,200	580		
Nickel	7440020	140 T	4,600 T	28,000 T	28,000 T	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7	See (d) & Table 7		
Nitrate	14797558	10,000		3,733,333	3,733,333						
Nitrite	14797650	1,000		233,333	233,333						
Nitrate + Nitrite		10,000									
Nitrobenzene	98953	3.5	138	467	467	1,300	850	1,300	850		
p-Nitrophenol	100027					4,100	3,000	4,100	3,000		
N-nitrosodimethylamine	62759	0.001	3	0.03	0.03						
N-Nitrosodiphenylamine	86306	7.1	6	290	290	2,900	200	2,900	200		
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.2	88,667						
Nonylphenol	104405					28	6.6	28	6.6		
Oxamyl	23135220	200		23,333	23,333						
Parathion	56382					0.07	0.01	0.07	0.01		
Paraquat	1910425	32		4,200	4,200	100	54	100	54		
Pentachlorophenol	87865	1	1,000	12	28,000	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10	See (e), (j) & Table 10		
Permethrin	52645531	350		46,667	46,667	0.3	0.2	0.3	0.2		
Phenanthrene	85018					30	6.3	30	6.3		
Phenol	108952	2,100	37	280,000	280,000	5,100	730	7,000	1,000		
Picloram	1918021	500	2,710	65,333	65,333						
Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	2 19	19	2	0.01	2	0.02	0.001	0.001
Pyrene	129000	210	800	28,000	28,000						
Radium 226 + Radium 228		5 pCi/L									
Selenium	7782492	50 T	667 T	4,667 T	4,667 T		2 T		2 T	20 T	50 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T	See (d) & Table 8		See (d) & Table 8			
Simazine	112349	4		4,667	4,667						

Strontium	7440246	8 pCi/L									
Styrene	100425	100		186.667	186.667	5.600	370	5.600	370		
Sulfides											
2,3,7,8-Tetrachlorod-ibenzo- p-dioxin (2,3,7,8- TCDD)	1746016	0.00003	5x10-9	0.00003	0.0009	0.01	0.005	0.01	0.005		
1,1,2,2-Tetrachloroethane	79345	0.2	4	7	56.000	4.700	3.200	4.700	3.200		
Tetrachloroethylene	127184	5	261	9.333	9.333	2.600	280	6.500	680		
Thallium	7440280	2 T	7.2 T	75 T	75 T	700 D	150 D	700 D	150 D		
Toluene	108883	1.000	201.000	280.000	280.000	8.700	180	8.700	180		
Toxaphene	8001352	3	0.0003	1.3	933	0.7	0.0002	0.7	0.0002	0.005	0.005
Tributyltin						0.5	0.07	0.5	0.07		
1,2,4-Trichlorobenzene	120821	70	70	9.333	9.333	750	130	1.700	300		
1,1,1-Trichloroethane	71556	200	428.571	1.866.667	1.866.667	2.600	1.600	2.600	1.600	1.000	
1,1,2-Trichloroethane	79005	5	16	25	3.733	18.000	12.000	18.000	12.000		
Trichloroethylene	79016	5	29	280.000	280	20.000	1.300	20.000	1.300		
2,4,6-Trichlorophenol	88062	3.2	2	130	130	160	25	160	25		
2,4,5-Trichlorophenoxy propionic acid (2,4,5-TP)	93721	50		7.467	7.467						
Trihalomethanes (T)		80									
Tritium	10028178	20,000 pCi/L									
Uranium	7440611	30 D		2.800	2.800						
Vinyl chloride	75014	2	5	2	2.800						
Xylenes (T)	1330207	10.000		186.667	186.667						
Zinc	7440666	2,100 T	5,106 T	280.000 I	280.000 I	See (d) & Table 9	10,000 I	25,000 I			

Footnotes

- a. The asbestos standard is 7 million fibers (longer than 10 micrometers) per liter.
- b. The aldrin/dieldrin standard is exceeded when the sum of the two compounds exceeds 0.003 µg/L.
- c. In lakes, the acute criteria for hydrogen sulfide apply only to water samples taken from the epilimnion, or the upper layer of a lake or reservoir.
- d. Hardness, expressed as mg/L CaCO<sub>3</sub>, is determined according to the following criteria:

- i. If the receiving water body has an A&Wc or A&Ww designated use, then hardness is based on the hardness of the receiving water body from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.
  - ii. The mathematical equations for the hardness-dependent parameter represent the water quality standards. Examples of criteria for the hardness-dependent parameters have been calculated and are presented in separate tables in this rule for the convenience of the user.
- e. pH is determined according to the following criteria:
- i. If the receiving water has an A&Wc or A&Ww designated use, then pH is based on the pH of the receiving water body from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
  - ii. The mathematical equations for ammonia represent the water quality standards. Examples of criteria for ammonia have been calculated and are presented in separate tables in this rule for the convenience of the user.
- f. Table 1 abbreviations.
- i. µg/L = micrograms per liter.
  - ii. mg/kg = milligrams per kilogram.
  - iii. pCi/L = picocuries per liter.
  - iv. D = dissolved.
  - v. T = total recoverable.
  - vi. TTHM indicates that the chemical is a trihalomethane.
- g. The total trihalomethane (TTHM) standard is exceeded when the sum of these four compounds exceeds 80 µg/L, as a rolling annual average.
- h. The concentration of gross alpha particle activity includes radium-226, but excludes radon and uranium.
- i. The average annual concentration of beta particle activity and photon emitters from manmade radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirems per year.
- j. The mathematical equations for the pH-dependent parameters represent the water quality standards. Examples of criteria for the pH-dependent parameters have been calculated and are presented in separate tables in this rule for the convenience of the user.
- k. Abbreviations for the mathematical equations are as follows:
- e = the base of the natural logarithm and is a mathematical constant equal to 2.71828
- LN = is the natural logarithm
- CMC = Criterion Maximum Concentration (acute)
- CCC= Criterion Continuous Concentration (chronic)

**Table 2. Acute Water Quality Standards for Dissolved Cadmium**

<u>Aquatic and Wildlife Coldwater AZ</u>		<u>Aquatic and Wildlife Warm Water AZ</u>	
<u>Hard. mg/L</u>	<u>Std. µg/L</u>	<u>Hard. mg/L</u>	<u>Std. µg/L</u>
20	0.40	20	2.1
100	1.8	100	9.4
400	6.5	400	34
$e^{(0.9789 \cdot \text{LN}(\text{Hardness}) - 3.866)} \cdot (1.136672 - \text{LN}(\text{Hardness})) \cdot 0.041838$		$e^{(0.9789 \cdot \text{LN}(\text{Hardness}) - 2.208)} \cdot (1.136672 - \text{LN}(\text{Hardness})) \cdot 0.041838$	

**Table 3. Chronic Water Quality Standards for Dissolved Cadmium**

<u>Aquatic and Wildlife Coldwater AZ and Warmwater AZ</u>	
<u>Hard. mg/L</u>	<u>Std. µg/L</u>
20	0.21
100	0.72
400	2.0
$e^{(0.7977 \cdot \text{LN}(\text{Hardness}) - 3.909)} \cdot (1.101672 - \text{LN}(\text{Hardness})) \cdot 0.041838$	

**Table 4. Water Quality Standards for Dissolved Chromium III**

<u>Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ</u>		<u>Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ</u>	
<u>Hard. mg/L</u>	<u>Std. µg/L</u>	<u>Hard. mg/L</u>	<u>Std. µg/L</u>
20	152	20	19.8
100	570	100	74.1
400	1,773	400	231
$e^{(0.819 \cdot \text{LN}(\text{Hardness}) + 3.7256)} \cdot (0.316)$		$e^{(0.819 \cdot \text{LN}(\text{Hardness}) + 0.6848)} \cdot (0.86)$	

**Table 5. Water Quality Standards for Dissolved Copper**

<u>Acute Aquatic and Wildlife</u> <u>Coldwater AZ and Warmwater AZ</u>		<u>Chronic Aquatic and Wildlife</u> <u>Coldwater AZ and Warmwater AZ</u>	
<u>Hard. mg/L</u>	<u>Std. µg/L</u>	<u>Hard. mg/L</u>	<u>Std. µg/L</u>
<u>20</u>	<u>2.9</u>	<u>20</u>	<u>2.3</u>
<u>100</u>	<u>13</u>	<u>100</u>	<u>9.0</u>
<u>400</u>	<u>50</u>	<u>400</u>	<u>29</u>
$\frac{1}{e}(0.9422*LN(Hardness)-1.702)*(0.96)$		$\frac{1}{e}(0.8545*LN(Hardness)-1.702)*(0.96)$	

**Table 6. Water Quality Standards for Dissolved Lead**

<u>Acute Aquatic and Wildlife</u> <u>Coldwater AZ and Warmwater AZ</u>		<u>Chronic Aquatic and Wildlife</u> <u>Coldwater AZ and Warmwater AZ</u>	
<u>Hard. mg/L</u>	<u>Std. µg/L</u>	<u>Hard. mg/L</u>	<u>Std. µg/L</u>
<u>20</u>	<u>10.8</u>	<u>20</u>	<u>0.42</u>
<u>100</u>	<u>64.6</u>	<u>100</u>	<u>2.5</u>
<u>400</u>	<u>281</u>	<u>400</u>	<u>10.9</u>
$\frac{1}{e}((1.273*LN(Hardness)-1.46)*(1.46203-(LN(Hardness))*(0.145712)))$		$\frac{1}{e}((1.273*LN(Hardness)-4.705)*(1.46203-(LN(Hardness))*(0.145712)))$	

**Table 7. Water Quality Standards for Dissolved Nickel**

<u>Acute Aquatic and Wildlife</u> <u>Coldwater AZ and Warmwater AZ</u>		<u>Chronic Aquatic and Wildlife Coldwater</u> <u>AZ and Warmwater AZ</u>	
<u>Hard. mg/L</u>	<u>Std. µg/L</u>	<u>Hard. mg/L</u>	<u>Std. µg/L</u>
<u>20</u>	<u>120.0</u>	<u>20</u>	<u>13.3</u>
<u>100</u>	<u>468</u>	<u>100</u>	<u>52.0</u>
<u>400</u>	<u>1513</u>	<u>400</u>	<u>168</u>
$\frac{1}{e}(0.846*LN(Hardness)+2.255)*(0.998)$		$\frac{1}{e}(0.846*LN(Hardness)+0.0584)*(0.997)$	

**Table 8. Water Quality Standards for Dissolved Silver**

<u>Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ</u>	
<u>Hard. mg/L</u>	<u>Std. µg/L</u>
<u>20</u>	<u>0.20</u>
<u>100</u>	<u>3.2</u>
<u>400</u>	<u>34.9</u>
$e(1.72*LN(Hardness)-6.59)*(0.85)$	

**Table 9. Water Quality Standards for Dissolved Zinc**

<u>Acute and Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ</u>	
<u>Hard. mg/L</u>	<u>Std. µg/L</u>
<u>20</u>	<u>30.0</u>
<u>100</u>	<u>117</u>
<u>400</u>	<u>379</u>
$e(0.8473*LN(Hardness)+0.884)*(0.978)$	

**Table 10. Water Quality Standards for Pentachlorophenol**

<u>Acute Aquatic and Wildlife Coldwater AZ and Warmwater AZ</u>		<u>Chronic Aquatic and Wildlife Coldwater AZ and Warmwater AZ</u>	
<u>pH</u>	<u>µg/L</u>	<u>pH</u>	<u>µg/L</u>
<u>3</u>	<u>0.16</u>	<u>3</u>	<u>0.1</u>
<u>6</u>	<u>3.3</u>	<u>6</u>	<u>2.1</u>
<u>9</u>	<u>67.7</u>	<u>9</u>	<u>42.7</u>
$e(1.005*(pH)-4.83)$		$e(1.005*(pH)-5.29)$	

**Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Present**

For the aquatic and wildlife coldwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
<u>6.5</u>	<u>33</u>	<u>33</u>	<u>32</u>	<u>29</u>	<u>27</u>	<u>25</u>	<u>23</u>	<u>21</u>	<u>19</u>	<u>18</u>	<u>16</u>	<u>15</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>9.9</u>
<u>6.6</u>	<u>31</u>	<u>31</u>	<u>30</u>	<u>28</u>	<u>26</u>	<u>24</u>	<u>22</u>	<u>20</u>	<u>18</u>	<u>17</u>	<u>16</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>10</u>	<u>9.5</u>
<u>6.7</u>	<u>30</u>	<u>30</u>	<u>29</u>	<u>27</u>	<u>24</u>	<u>22</u>	<u>21</u>	<u>19</u>	<u>18</u>	<u>16</u>	<u>15</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>9.8</u>	<u>9</u>
<u>6.8</u>	<u>28</u>	<u>28</u>	<u>27</u>	<u>25</u>	<u>23</u>	<u>21</u>	<u>20</u>	<u>18</u>	<u>17</u>	<u>15</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>10</u>	<u>9.2</u>	<u>8.5</u>
<u>6.9</u>	<u>26</u>	<u>26</u>	<u>25</u>	<u>23</u>	<u>21</u>	<u>20</u>	<u>18</u>	<u>17</u>	<u>15</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>10</u>	<u>9.4</u>	<u>8.6</u>	<u>7.9</u>
<u>7</u>	<u>24</u>	<u>24</u>	<u>23</u>	<u>21</u>	<u>20</u>	<u>18</u>	<u>17</u>	<u>15</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>10</u>	<u>9.4</u>	<u>8.6</u>	<u>8</u>	<u>7.3</u>
<u>7.1</u>	<u>22</u>	<u>22</u>	<u>21</u>	<u>20</u>	<u>18</u>	<u>17</u>	<u>15</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>10</u>	<u>9.3</u>	<u>8.5</u>	<u>7.9</u>	<u>7.2</u>	<u>6.7</u>
<u>7.2</u>	<u>20</u>	<u>20</u>	<u>19</u>	<u>18</u>	<u>16</u>	<u>15</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>9.8</u>	<u>9.1</u>	<u>8.3</u>	<u>7.7</u>	<u>7.1</u>	<u>6.5</u>	<u>6</u>
<u>7.3</u>	<u>18</u>	<u>18</u>	<u>17</u>	<u>16</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>10</u>	<u>9.5</u>	<u>8.7</u>	<u>8</u>	<u>7.4</u>	<u>6.8</u>	<u>6.3</u>	<u>5.8</u>	<u>5.3</u>
<u>7.4</u>	<u>15</u>	<u>15</u>	<u>15</u>	<u>14</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>9.8</u>	<u>9</u>	<u>8.3</u>	<u>7.7</u>	<u>7</u>	<u>6.5</u>	<u>6</u>	<u>5.5</u>	<u>5.1</u>	<u>4.7</u>
<u>7.5</u>	<u>13</u>	<u>13</u>	<u>13</u>	<u>12</u>	<u>11</u>	<u>10</u>	<u>9.2</u>	<u>8.5</u>	<u>7.8</u>	<u>7.2</u>	<u>6.6</u>	<u>6.1</u>	<u>5.6</u>	<u>5.2</u>	<u>4.8</u>	<u>4.4</u>	<u>4</u>
<u>7.6</u>	<u>11</u>	<u>11</u>	<u>11</u>	<u>10</u>	<u>9.3</u>	<u>8.6</u>	<u>7.9</u>	<u>7.3</u>	<u>6.7</u>	<u>6.2</u>	<u>5.7</u>	<u>5.2</u>	<u>4.8</u>	<u>4.4</u>	<u>4.1</u>	<u>3.8</u>	<u>3.5</u>
<u>7.7</u>	<u>9.6</u>	<u>9.6</u>	<u>9.3</u>	<u>8.6</u>	<u>7.9</u>	<u>7.3</u>	<u>6.7</u>	<u>6.2</u>	<u>5.7</u>	<u>5.2</u>	<u>4.8</u>	<u>4.4</u>	<u>4.1</u>	<u>3.8</u>	<u>3.5</u>	<u>3.2</u>	<u>3</u>
<u>7.8</u>	<u>8.1</u>	<u>8.1</u>	<u>7.9</u>	<u>7.2</u>	<u>6.7</u>	<u>6.1</u>	<u>5.6</u>	<u>5.2</u>	<u>4.8</u>	<u>4.4</u>	<u>4</u>	<u>3.7</u>	<u>3.4</u>	<u>3.2</u>	<u>2.9</u>	<u>2.7</u>	<u>2.5</u>
<u>7.9</u>	<u>6.8</u>	<u>6.8</u>	<u>6.6</u>	<u>6</u>	<u>5.6</u>	<u>5.1</u>	<u>4.7</u>	<u>4.3</u>	<u>4</u>	<u>3.7</u>	<u>3.4</u>	<u>3.1</u>	<u>2.9</u>	<u>2.6</u>	<u>2.4</u>	<u>2.2</u>	<u>2.1</u>
<u>8</u>	<u>5.6</u>	<u>5.6</u>	<u>5.4</u>	<u>5</u>	<u>4.6</u>	<u>4.2</u>	<u>3.9</u>	<u>3.6</u>	<u>3.3</u>	<u>3</u>	<u>2.8</u>	<u>2.6</u>	<u>2.4</u>	<u>2.2</u>	<u>2</u>	<u>1.9</u>	<u>1.7</u>
<u>8.1</u>	<u>4.6</u>	<u>4.6</u>	<u>4.5</u>	<u>4.1</u>	<u>3.8</u>	<u>3.5</u>	<u>3.2</u>	<u>3</u>	<u>2.7</u>	<u>2.5</u>	<u>2.3</u>	<u>2.1</u>	<u>2</u>	<u>1.8</u>	<u>1.7</u>	<u>1.5</u>	<u>1.4</u>
<u>8.2</u>	<u>3.8</u>	<u>3.8</u>	<u>3.7</u>	<u>3.5</u>	<u>3.1</u>	<u>2.9</u>	<u>2.7</u>	<u>2.4</u>	<u>2.3</u>	<u>2.1</u>	<u>1.9</u>	<u>1.8</u>	<u>1.6</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>
<u>8.3</u>	<u>3.1</u>	<u>3.1</u>	<u>3.1</u>	<u>2.8</u>	<u>2.6</u>	<u>2.4</u>	<u>2.2</u>	<u>2</u>	<u>1.9</u>	<u>1.7</u>	<u>1.6</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.96</u>
<u>8.4</u>	<u>2.6</u>	<u>2.6</u>	<u>2.5</u>	<u>2.3</u>	<u>2.1</u>	<u>2</u>	<u>1.8</u>	<u>1.7</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.93</u>	<u>0.86</u>	<u>0.79</u>
<u>8.5</u>	<u>2.1</u>	<u>2.1</u>	<u>2.1</u>	<u>1.9</u>	<u>1.8</u>	<u>1.6</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>0.98</u>	<u>0.9</u>	<u>0.83</u>	<u>0.77</u>	<u>0.71</u>	<u>0.65</u>
<u>8.6</u>	<u>1.8</u>	<u>1.8</u>	<u>1.7</u>	<u>1.6</u>	<u>1.5</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.96</u>	<u>0.88</u>	<u>0.81</u>	<u>0.75</u>	<u>0.69</u>	<u>0.63</u>	<u>0.59</u>	<u>0.54</u>

<b>8.7</b>	<u>1.5</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.94</u>	<u>0.87</u>	<u>0.8</u>	<u>0.74</u>	<u>0.68</u>	<u>0.62</u>	<u>0.57</u>	<u>0.53</u>	<u>0.49</u>	<u>0.45</u>
<b>8.8</b>	<u>1.2</u>	<u>1.2</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.93</u>	<u>0.86</u>	<u>0.79</u>	<u>0.73</u>	<u>0.67</u>	<u>0.62</u>	<u>0.57</u>	<u>0.52</u>	<u>0.48</u>	<u>0.44</u>	<u>0.41</u>	<u>0.37</u>
<b>8.9</b>	<u>1</u>	<u>1</u>	<u>1</u>	<u>0.93</u>	<u>0.85</u>	<u>0.79</u>	<u>0.72</u>	<u>0.67</u>	<u>0.61</u>	<u>0.56</u>	<u>0.52</u>	<u>0.48</u>	<u>0.44</u>	<u>0.4</u>	<u>0.37</u>	<u>0.34</u>	<u>0.32</u>
<b>9</b>	<u>0.88</u>	<u>0.88</u>	<u>0.86</u>	<u>0.79</u>	<u>0.73</u>	<u>0.67</u>	<u>0.62</u>	<u>0.57</u>	<u>0.52</u>	<u>0.48</u>	<u>0.44</u>	<u>0.41</u>	<u>0.37</u>	<u>0.34</u>	<u>0.32</u>	<u>0.29</u>	<u>0.27</u>
$\text{MIN}\left(\frac{0.275}{1 + 10^{7.204 - \text{pH}}} + \frac{39.0}{1 + 10^{\text{pH} - 7.204}}, \left(0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204 - \text{pH}}} + \frac{1.6181}{1 + 10^{\text{pH} - 7.204}}\right) \times (23.12 \times 10^{0.026 \times (20 - T)})\right)\right)$																	

**Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ, Unionid Mussels Present**

For the aquatic and wildlife warmwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																				
	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45

<b>8.8</b>	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
<b>8.9</b>	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
<b>9</b>	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$0.7249 \times \left( \frac{0.0114}{1 + 10^{7.204 - pH}} + \frac{1.6181}{1 + 10^{pH - 7.204}} \right) \times \text{MIN}(51.93, 23.12 \times 10^{0.036 \times (20 - T)})$$

**Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ and Warmwater AZ, Unionid Mussels Present**

For the aquatic and wildlife coldwater and warmwater AZ uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																							
	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1
6.6	4.8	4.5	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1
6.9	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1
7	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99
7.1	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95
7.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79
7.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	0.98	0.92	0.86	0.81	0.76	0.71	0.67
7.7	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47
8	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6	0.56	0.53	0.5	0.44	0.44	0.41
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81	0.76	0.71	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35
8.2	1.3	1.2	1.2	1.1	1	0.96	0.9	0.84	0.79	0.74	0.7	0.65	0.61	0.57	0.54	0.5	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3
8.3	1.1	1.1	0.99	0.93	0.87	0.82	0.76	0.72	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26
8.4	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47	0.44	0.41	0.39	0.36	0.34	0.32	0.3	0.28	0.26	0.25	0.23	0.22
8.5	0.8	0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31	0.29	0.27	0.25	0.24	0.22	0.21	0.2	0.18
8.6	0.68	0.64	0.6	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.16	0.15

8.7	0.57	0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13
8.8	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.2	0.19	0.17	0.16	0.15	0.14	0.13	0.13	0.12	0.11
8.9	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.12	0.11	0.1	0.09
9	0.36	0.34	0.32	0.3	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.1	0.09	0.09	0.08

$$0.8876 \times \left( \frac{0.0278}{1 + 10^{7.688 - pH}} + \frac{1.1994}{1 + 10^{pH - 7.688}} \right) \times (2.126 \times 10^{0.028 \times (20 - \text{MAX}(T, 7))})$$


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**Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Absent**

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																	
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
6.5	33	33	33	33	33	33	33	33	33	33	33	33	33	33	31	29	27	
6.6	31	31	31	31	31	31	31	31	31	31	31	31	31	31	30	28	26	
6.7	30	30	30	30	30	30	30	30	30	30	30	30	30	30	29	26	24	
6.8	28	28	28	28	28	28	28	28	28	28	28	28	28	28	27	25	23	
6.9	26	26	26	26	26	26	26	26	26	26	26	26	26	26	25	23	21	
7	24	24	24	24	24	24	24	24	24	24	24	24	24	24	23	21	20	
7.1	22	22	22	22	22	22	22	22	22	22	22	22	22	22	21	19	18	
7.2	20	20	20	20	20	20	20	20	20	20	20	20	20	20	19	17	16	
7.3	18	18	18	18	18	18	18	18	18	18	18	18	18	18	17	16	14	
7.4	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	14	13	
7.5	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	12	11	
7.6	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	10	9.3	
7.7	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.3	8.6	7.9
7.8	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	7.8	7.2	6.6
7.9	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.5	6	5.5
8	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.6
8.1	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.5	4.1	3.8
8.2	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7	3.4	3.1
8.3	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3	2.8	2.6
8.4	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.5	2.3	2.1
8.5	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	1.9	1.8
8.6	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.6	1.4
8.7	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4	1.3	1.2

<u>8.8</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>														
<u>8.9</u>	<u>1</u>	<u>0.92</u>	<u>0.85</u>														
<u>9</u>	<u>0.88</u>	<u>0.85</u>	<u>0.78</u>	<u>0.72</u>													
$MIN\left(\frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}\right) \cdot \left(0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204 - pH}} + \frac{1.6181}{1 + 10^{pH - 7.204}}\right) \times (62.15 \times 10^{0.036 \times (20 - T)})\right)$																	

**Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ Uses, Unionid Mussels Absent**

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

<b>pH</b>	<b>Temperature (°C)</b>																
	<b>0-14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>
<b>6.5</b>	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
<b>6.6</b>	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
<b>6.7</b>	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
<b>6.8</b>	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
<b>6.9</b>	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
<b>7</b>	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
<b>7.1</b>	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
<b>7.2</b>	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
<b>7.3</b>	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
<b>7.4</b>	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
<b>7.5</b>	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
<b>7.6</b>	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
<b>7.7</b>	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
<b>7.8</b>	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
<b>7.9</b>	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6	5.5
<b>8</b>	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.2	7.5	6.9	6.4	5.9	5.4	5	4.6
<b>8.1</b>	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	6.8	6.2	5.7	5.3	4.9	4.5	4.1	3.8
<b>8.2</b>	6	6	6	6	6	6	6	6	6	5.6	5.1	4.7	4.4	4	3.7	3.4	3.1
<b>8.3</b>	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6
<b>8.4</b>	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	3.8	3.4	3.2	3	2.7	2.5	2.3	2.1
<b>8.5</b>	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.1	2.9	2.6	2.4	2.2	2.1	1.9	1.8
<b>8.6</b>	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4

<u>8.7</u>	<u>2.3</u>	<u>2.2</u>	<u>2</u>	<u>1.8</u>	<u>1.7</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>								
<u>8.8</u>	<u>1.9</u>	<u>1.8</u>	<u>1.7</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>								
<u>8.9</u>	<u>1.6</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.92</u>	<u>0.85</u>								
<u>9</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.93</u>	<u>0.85</u>	<u>0.78</u>	<u>0.72</u>								
$0.7249 \times \left( \frac{0.0114}{1 + 10^{7.204 - pH}} + \frac{1.6181}{1 + 10^{pH - 7.204}} \right) \times MIN \left( 51.93, (62.15 \times 10^{0.036 \times (20 - T)}) \right)$																	

**Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater AZ, Unionid Mussels Absent**

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

pH	Temperature (°C)																													
	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30						
<b>6.5</b>	19	17	16	15	14	13	13	12	11	10	9.7	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2						
<b>6.6</b>	18	17	16	15	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1						
<b>6.7</b>	18	17	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1						
<b>6.8</b>	17	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4						
<b>6.9</b>	17	16	15	14	13	12	12	11	10	9.5	8.9	8.4	7.8	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9						
<b>7</b>	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.9	5.5	5.1	4.8	4.5	4.2	4	3.7						
<b>7.1</b>	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6						
<b>7.2</b>	15	14	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4						
<b>7.3</b>	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2						
<b>7.4</b>	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3						
<b>7.5</b>	12	11	11	10	9.4	8.8	8.2	7.7	7.2	6.8	6.4	6	5.6	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8						
<b>7.6</b>	11	10	10	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5						
<b>7.7</b>	9.9	9.3	8.7	8.1	7.7	7.2	6.8	6.3	5.9	5.6	5.2	4.9	4.6	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3						
<b>7.8</b>	8.8	8.3	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2						
<b>7.9</b>	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8						
<b>8</b>	6.8	6.3	6	5.6	5.2	4.9	4.6	4.3	4	3.8	3.6	3.3	3.1	2.9	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5						
<b>8.1</b>	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3						
<b>8.2</b>	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3	2.8	2.6	2.5	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1						
<b>8.3</b>	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96						
<b>8.4</b>	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81						
<b>8.5</b>	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69						
<b>8.6</b>	2.6	2.4	2.2	2.1	2	1.9	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58						

<b>8.7</b>	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.93	0.88	0.82	0.77	0.72	0.68	0.63	0.6	0.56	0.52	0.49
<b>8.8</b>	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79	0.74	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
<b>8.9</b>	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49	0.46	0.43	0.4	0.38	0.36
<b>9</b>	1.4	1.3	1.2	1.1	1	0.98	0.92	0.86	0.81	0.76	0.71	0.66	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31
$0.9405 \times \left( \frac{0.0278}{1 + 10^{7.688 - \text{pH}}} + \frac{1.1994}{1 + 10^{\text{pH} - 7.688}} \right) \times (7.547 \times 10^{0.028 \times (20 - \text{MAX}(7,7))})$																								

**Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater AZ, Unionid Mussels Absent**

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
<b>6.5</b>	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
<b>6.6</b>	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
<b>6.7</b>	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
<b>6.8</b>	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
<b>6.9</b>	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
<b>7</b>	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7
<b>7.1</b>	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
<b>7.2</b>	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
<b>7.3</b>	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2

<u>7.4</u>	<u>5.2</u>	<u>5</u>	<u>4.7</u>	<u>4.4</u>	<u>4.1</u>	<u>3.9</u>	<u>3.6</u>	<u>3.4</u>	<u>3.2</u>	<u>3</u>							
<u>7.5</u>	<u>4.8</u>	<u>4.6</u>	<u>4.3</u>	<u>4.1</u>	<u>3.8</u>	<u>3.6</u>	<u>3.3</u>	<u>3.1</u>	<u>2.9</u>	<u>2.8</u>							
<u>7.6</u>	<u>4.4</u>	<u>4.2</u>	<u>3.9</u>	<u>3.7</u>	<u>3.5</u>	<u>3.2</u>	<u>3</u>	<u>2.9</u>	<u>2.7</u>	<u>2.5</u>							
<u>7.7</u>	<u>3.9</u>	<u>3.8</u>	<u>3.5</u>	<u>3.3</u>	<u>3.1</u>	<u>2.9</u>	<u>2.7</u>	<u>2.6</u>	<u>2.4</u>	<u>2.3</u>							
<u>7.8</u>	<u>3.5</u>	<u>3.4</u>	<u>3.2</u>	<u>3</u>	<u>2.8</u>	<u>2.6</u>	<u>2.4</u>	<u>2.3</u>	<u>2.1</u>	<u>2</u>							
<u>7.9</u>	<u>3.1</u>	<u>3</u>	<u>2.8</u>	<u>2.6</u>	<u>2.4</u>	<u>2.3</u>	<u>2.1</u>	<u>2</u>	<u>1.9</u>	<u>1.8</u>							
<u>8</u>	<u>2.7</u>	<u>2.6</u>	<u>2.4</u>	<u>2.3</u>	<u>2.1</u>	<u>2</u>	<u>1.9</u>	<u>1.7</u>	<u>1.6</u>	<u>1.5</u>							
<u>8.1</u>	<u>2.3</u>	<u>2.2</u>	<u>2.1</u>	<u>1.9</u>	<u>1.8</u>	<u>1.7</u>	<u>1.6</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>							
<u>8.2</u>	<u>2</u>	<u>1.9</u>	<u>1.8</u>	<u>1.7</u>	<u>1.6</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>							
<u>8.3</u>	<u>1.7</u>	<u>1.6</u>	<u>1.5</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.96</u>							
<u>8.4</u>	<u>1.4</u>	<u>1.3</u>	<u>1.2</u>	<u>1.1</u>	<u>1.1</u>	<u>0.99</u>	<u>0.93</u>	<u>0.87</u>	<u>0.81</u>								
<u>8.5</u>	<u>1.2</u>	<u>1.1</u>	<u>1</u>	<u>0.95</u>	<u>0.89</u>	<u>0.83</u>	<u>0.78</u>	<u>0.73</u>	<u>0.69</u>								
<u>8.6</u>	<u>1</u>	<u>0.97</u>	<u>0.91</u>	<u>0.85</u>	<u>0.8</u>	<u>0.75</u>	<u>0.7</u>	<u>0.66</u>	<u>0.62</u>	<u>0.58</u>							
<u>8.7</u>	<u>0.86</u>	<u>0.82</u>	<u>0.77</u>	<u>0.72</u>	<u>0.68</u>	<u>0.64</u>	<u>0.6</u>	<u>0.56</u>	<u>0.52</u>	<u>0.49</u>							
<u>8.8</u>	<u>0.73</u>	<u>0.7</u>	<u>0.65</u>	<u>0.61</u>	<u>0.58</u>	<u>0.54</u>	<u>0.51</u>	<u>0.47</u>	<u>0.44</u>	<u>0.42</u>							
<u>8.9</u>	<u>0.62</u>	<u>0.6</u>	<u>0.56</u>	<u>0.52</u>	<u>0.49</u>	<u>0.46</u>	<u>0.43</u>	<u>0.41</u>	<u>0.38</u>	<u>0.36</u>							
<u>9</u>	<u>0.54</u>	<u>0.51</u>	<u>0.48</u>	<u>0.45</u>	<u>0.42</u>	<u>0.4</u>	<u>0.37</u>	<u>0.35</u>	<u>0.33</u>	<u>0.31</u>							
$0.9405 \times \left( \frac{0.0278}{1 + 10^{7.688 - pH}} + \frac{1.1994}{1 + 10^{pH - 7.688}} \right) \times \text{MIN} \left( 6.920, (7.547 \times 10^{0.028 \times (20 - T)}) \right)$																	

**R18-2-216. The Protected Surface Waters List**

**Table A. Non-WOTUS Protected Surface Waters and Designated Uses**

<u>Watershed</u>	<u>Surface Waters</u>	<u>Segment Description and Location (Latitude and Longitudes are in NAD 83)</u>	<u>Aquatic and Wildlife</u>		<u>Human Health</u>				<u>Agricultural</u>	
			<u>A&amp;Wc</u>	<u>A&amp;Ww</u>	<u>FBC</u>	<u>PBC</u>	<u>DWS</u>	<u>FC</u>	<u>AgI</u>	<u>AgL</u>
			<u>AZ</u>	<u>AZ</u>	<u>AZ</u>	<u>AZ</u>	<u>AZ</u>	<u>AZ</u>	<u>AZ</u>	<u>AZ</u>

CG	<u>Cottonwood Creek</u>	Headwaters to confluence with unnamed tributary at <u>35°20'46"/113°35'31"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
CG	<u>Cottonwood Creek</u>	Below confluence with unnamed tributary to confluence with <u>Truxton Wash</u>		<u>A&amp;Ww AZ</u>	<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
CG	<u>Wright Canyon Creek</u>	Headwaters to confluence with unnamed tributary at <u>35°20'48"/113°30'40"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
CG	<u>Wright Canyon Creek</u>	Below confluence with unnamed tributary to confluence with <u>Truxton Wash</u>		<u>A&amp;Ww AZ</u>	<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
LC	<u>Boot Lake</u>	<u>34°58'54"/111°20'11"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
LC	<u>Little Ortega Lake</u>	<u>34°22'47"/109°40'06"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		
LC	<u>Mormon Lake</u>	<u>34°56'38"/111°27'25"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>		<u>DWS</u> <u>AZ</u>	<u>FC</u> <u>AZ</u>	<u>AqL</u> <u>AZ</u>	<u>AqL</u> <u>AZ</u>
LC	<u>Potato Lake</u>	<u>35°03'15"/111°24'13"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
LC	<u>Pratt Lake</u>	<u>34°01'32"/109°04'18"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		
LC	<u>Sponseller Lake</u>	<u>34°14'09"/109°50'45"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
LC	<u>Vail Lake</u>	<u>35°05'23"/111°30'46"</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
LC	<u>Water Canyon Reservoir</u>	<u>34°03'38"/109°26'20"</u>		<u>A&amp;Ww AZ</u>	<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>	<u>AqL</u> <u>AZ</u>	<u>AqL</u> <u>AZ</u>
MG	<u>Bonsall Park Lake</u>	<u>59th Avenue &amp; Bethany Home Road at 33°31'24"/112°11'08"</u>		<u>A&amp;Ww AZ</u>		<u>PBC AZ</u>		<u>FC</u> <u>AZ</u>		
MG	<u>Canal Park Lake</u>	<u>College Avenue &amp; Curry Road, Tempe at 33°26'54"/ 111°56'19"</u>		<u>A&amp;Ww AZ</u>		<u>PBC AZ</u>		<u>FC</u> <u>AZ</u>		
SP	<u>Big Creek</u>	Headwaters to confluence with <u>Pitchfork Canyon Wash</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		<u>AqL</u> <u>AZ</u>
SP	<u>Goudy Canyon Wash</u>	Headwaters to confluence with <u>Grant Creek</u>	<u>A&amp;Wc</u> <u>AZ</u>		<u>FBC</u> <u>AZ</u>			<u>FC</u> <u>AZ</u>		
SP	<u>Grant Creek</u>	Headwaters to confluence with unnamed tributary at <u>32°38'10"/109°56'37"</u>		<u>A&amp;Ww AZ</u>	<u>FBC</u> <u>AZ</u>		<u>DWS</u> <u>AZ</u>	<u>FC</u> <u>AZ</u>		

SP	<u>Grant Creek</u>	<u>Below confluence with unnamed tributary to terminus near Willcox Playa</u>		<u>A&amp;Ww AZ</u>	<u>FBC AZ</u>			<u>FC AZ</u>		
SP	<u>High Creek</u>	<u>Headwaters to confluence with unnamed tributary at 32°33'08"/110°14'42"</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>		<u>AqL AZ</u>
SP	<u>High Creek</u>	<u>Below confluence with unnamed tributary to terminus near Willcox Playa</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>		<u>AqL AZ</u>
SP	<u>Pinery Creek</u>	<u>Headwaters to State Highway 181</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>		<u>DWS AZ</u>	<u>FC AZ</u>		<u>AqL AZ</u>
SP	<u>Pinery Creek</u>	<u>Below State Highway 181 to terminus near Willcox Playa</u>		<u>A&amp;Ww AZ</u>	<u>FBC AZ</u>		<u>DWS AZ</u>	<u>FC AZ</u>		<u>AqL AZ</u>
SP	<u>Post Creek</u>	<u>Headwaters to confluence with Grant Creek</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>	<u>AqL AZ</u>	<u>AqL AZ</u>
SP	<u>Riggs Flat Lake</u>	<u>32°42'28"/109°57'53"</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>	<u>AqL AZ</u>	<u>AqL AZ</u>
SP	<u>Rock Creek</u>	<u>Headwaters to confluence with Turkey Creek</u>			<u>FBC AZ</u>			<u>FC AZ</u>		<u>AqL AZ</u>
SP	<u>Soldier Creek</u>	<u>Headwaters to confluence with Post Creek at 32°40'50"/109°54'41"</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>		<u>AqL AZ</u>
SP	<u>Snow Flat Lake</u>	<u>32°39'10"/109°51'54"</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>	<u>AqL AZ</u>	<u>AqL AZ</u>
SP	<u>Stronghold Canyon East</u>	<u>Headwaters to 31°55'9.28"/109°57'53.24"</u>	<u>A&amp;Wc AZ</u>				<u>PBC AZ</u>			
SP	<u>Stronghold Canyon East</u>	<u>31°55'9.28"/109°57'53.24" to confluence with Carlink Canyon</u>		<u>A&amp;Ww AZ</u>			<u>PBC AZ</u>			
SP	<u>Turkey Creek</u>	<u>Headwaters to confluence with Rock Creek</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>	<u>AqL AZ</u>	<u>AqL AZ</u>
SP	<u>Turkey Creek</u>	<u>Below confluence with Rock Creek to terminus near Willcox Playa</u>		<u>A&amp;Ww AZ</u>	<u>FBC AZ</u>			<u>FC AZ</u>	<u>AqL AZ</u>	<u>AqL AZ</u>
UG	<u>Ward Canyon</u>	<u>Headwaters to confluence with Turkey Creek</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>		<u>AqL AZ</u>
VR	<u>Moonshine Creek</u>	<u>Headwaters to confluence with Post Creek</u>	<u>A&amp;Wc AZ</u>		<u>FBC AZ</u>			<u>FC AZ</u>		<u>AqL AZ</u>

**Table B. WOTUS Protected Surface Waters**

The waters listed in this table have been tentatively identified by ADEQ as WOTUS, under the law governing on 8/26/2022.

Notwithstanding its inclusion on the list below, the status of a particular water in this table can be contested by a person in an enforcement or permit proceeding, a challenge to an identification as an impaired water, or a challenge to a proposed TMDL for an impaired water. Any changes to Table C will be made through formal rulemaking.

The waters on this list have their designated uses assigned by Title 18, Chapter 11, Article 1. Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Historically Regulated as WOTUS and in Need of Further Study Table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.

**Watersheds:**

- BW = Bill Williams
- CG = Colorado – Grand Canyon
- CL = Colorado – Lower Gila
- LC = Little Colorado
- MG = Middle Gila
- SC = Santa Cruz – Rio Magdalena – Rio Sonoyta
- SP = San Pedro – Willcox Playa – Rio Yaqui
- SR = Salt River
- UG = Upper Gila
- VR = Verde River

**Other Abbreviations:**

- WWTP = Wastewater Treatment Plant
- Km = kilometers

<u>Watershed</u>	<u>Surface Water</u>	<u>Segment Description and Location (Latitude and Longitudes are in NAD 83)</u>
<u>BW</u>	<u>Big Sandy River</u>	<u>Headwaters to Alamo Lake</u>
<u>BW</u>	<u>Boulder Creek</u>	<u>Below confluence with unnamed tributary to confluence with Burro Creek</u>
<u>BW</u>	<u>Burro Creek</u>	<u>Below confluence with Boulder Creek to confluence with Big Sandy River</u>
<u>BW</u>	<u>Burro Creek (OAW)</u>	<u>Headwaters to confluence with Boulder Creek</u>
<u>BW</u>	<u>Francis Creek (OAW)</u>	<u>Headwaters to confluence with Burro Creek</u>

<u>BW</u>	<u>Kirkland Creek</u>	<u>Headwaters to confluence with Santa Maria River</u>
<u>BW</u>	<u>Trout Creek</u>	<u>Below confluence with unnamed tributary to confluence with Knight Creek</u>
<u>CG</u>	<u>Beaver Dam Wash</u>	<u>Headwaters to confluence with the Virgin River</u>
<u>CG</u>	<u>Bright Angel Creek</u>	<u>Headwaters to confluence with Roaring Springs Creek</u>
<u>CG</u>	<u>Bright Angel Creek</u>	<u>Below Roaring Spring Springs Creek to confluence with Colorado River</u>
<u>CG</u>	<u>Colorado River</u>	<u>Lake Powell to Lake Mead</u>
<u>CG</u>	<u>Crystal Creek</u>	<u>Below confluence with unnamed tributary to confluence with Colorado River</u>
<u>CG</u>	<u>Deer Creek</u>	<u>Below confluence with unnamed tributary to confluence with Colorado River</u>
<u>CG</u>	<u>Garden Creek</u>	<u>Headwaters to confluence with Pipe Creek</u>
<u>CG</u>	<u>Havasu Creek</u>	<u>From the Havasupai Indian Reservation boundary to confluence with the Colorado River</u>
<u>CG</u>	<u>Hermit Creek</u>	<u>Below Hermit Pack Trail crossing to confluence with the Colorado River</u>
<u>CG</u>	<u>Kanab Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Lake Mead</u>	<u>36°06'18"/114°26'33"</u>
<u>CG</u>	<u>Lake Powell</u>	<u>36°59'53"/111°08'17"</u>
<u>CG</u>	<u>Nankoweap Creek</u>	<u>Below confluence with unnamed tributary to confluence with Colorado River</u>
<u>CG</u>	<u>Paria River</u>	<u>Utah border to confluence with the Colorado River</u>
<u>CG</u>	<u>Phantom Creek</u>	<u>Below confluence with unnamed tributary to confluence with Bright Angel Creek</u>
<u>CG</u>	<u>Pipe Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Shinumo Creek</u>	<u>Below confluence with unnamed tributary to confluence with the Colorado River</u>
<u>CG</u>	<u>Short Creek</u>	<u>Headwaters to confluence with Fort Pearce Wash</u>
<u>CG</u>	<u>Tapeats Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Thunder River</u>	<u>Headwaters to confluence with Tapeats Creek</u>
<u>CG</u>	<u>Vasey's Paradise</u>	<u>A spring at 36°29'52"/111°51'26"</u>
<u>CG</u>	<u>Virgin River</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>White Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°18'45"/112°21'03"</u>
<u>CG</u>	<u>White Creek</u>	<u>Below confluence with unnamed tributary to confluence with the Colorado River</u>
<u>CL</u>	<u>A10 Backwater</u>	<u>33°31'45"/114°33'19"</u>
<u>CL</u>	<u>A7 Backwater</u>	<u>33°34'27"/114°32'04"</u>

CL	<u>Adobe Lake</u>	<u>33°02'36"/114°39'26"</u>
CL	<u>Cibola Lake</u>	<u>33°14'01"/114°40'31"</u>
CL	<u>Clear Lake</u>	<u>33°01'59"/114°31'19"</u>
CL	<u>Colorado River</u>	<u>Lake Mead to Topock Marsh</u>
CL	<u>Colorado River</u>	<u>Topock Marsh to Morelos Dam</u>
CL	<u>Gila River</u>	<u>Painted Rock Dam to confluence with the Colorado River</u>
CL	<u>Hunter's Hole Backwater</u>	<u>32°31'13"/114°48'07"</u>
CL	<u>Imperial Reservoir</u>	<u>32°53'02"/114°27'54"</u>
CL	<u>Island Lake</u>	<u>33°01'44"/114°36'42"</u>
CL	<u>Laguna Reservoir</u>	<u>32°51'35"/114°28'29"</u>
CL	<u>Lake Havasu</u>	<u>34°35'18"/114°25'47"</u>
CL	<u>Lake Mohave</u>	<u>35°26'58"/114°38'30"</u>
CL	<u>Martinez Lake</u>	<u>32°58'49"/114°28'09"</u>
CL	<u>Mittry Lake</u>	<u>32°49'17"/114°27'54"</u>
CL	<u>Nortons Lake</u>	<u>33°02'30"/114°37'59"</u>
CL	<u>Pretty Water Lake</u>	<u>33°19'51"/114°42'19"</u>
CL	<u>Topock Marsh</u>	<u>34°43'27"/114°28'59"</u>
LC	<u>Auger Creek</u>	<u>Headwaters to confluence with Nutrioso Creek</u>
LC	<u>Chevelon Canyon</u>	<u>Headwaters to confluence with the Little Colorado River</u>
LC	<u>Chevelon Canyon Lake</u>	<u>34°29'18"/110°49'30"</u>
LC	<u>Clear Creek</u>	<u>Headwaters to confluence with the Little Colorado River</u>
LC	<u>Clear Creek Reservoir</u>	<u>34°57'09"/110°39'14"</u>
LC	<u>Colter Creek</u>	<u>Headwaters to confluence with Nutrioso Creek</u>
LC	<u>Colter Reservoir</u>	<u>33°56'39"/109°28'53"</u>
LC	<u>Coyote Creek</u>	<u>Headwaters to confluence with the Little Colorado River</u>
LC	<u>Cragin Reservoir (formerly Blue Ridge Reservoir)</u>	<u>34°32'40"/111°11'33"</u>
LC	<u>East Clear Creek</u>	<u>Headwaters to confluence with Clear Creek</u>
LC	<u>Ellis Wiltbank Reservoir</u>	<u>34°05'25"/109°28'25"</u>
LC	<u>Fool's Hollow Lake</u>	<u>34°16'30"/110°03'43"</u>
LC	<u>Lee Valley Creek</u>	<u>From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River</u>
LC	<u>Lily Creek</u>	<u>Headwaters to confluence with Coyote Creek</u>
LC	<u>Little Colorado River</u>	<u>Headwaters to Lyman Reservoir</u>

<u>LC</u>	<u>Little Colorado River</u>	<u>Below Lyman Reservoir to confluence with the Puerco River</u>
<u>LC</u>	<u>Little Colorado River</u>	<u>Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands</u>
<u>LC</u>	<u>Little Colorado River, East Fork</u>	<u>Headwaters to confluence with the Little Colorado River</u>
<u>LC</u>	<u>Little Colorado River, South Fork</u>	<u>Headwaters to confluence with the Little Colorado River</u>
<u>LC</u>	<u>Little Colorado River, West Fork</u>	<u>Below Government Springs to confluence with the Little Colorado River</u>
<u>LC</u>	<u>Lyman Reservoir</u>	<u>34°21'21"/109°21'35"</u>
<u>LC</u>	<u>Mamie Creek</u>	<u>Headwaters to confluence with Coyote Creek</u>
<u>LC</u>	<u>Morrison Creek</u>	<u>Headwaters to Mamie Creek @ 33°59'24.45"/109°03'51.94</u>
<u>LC</u>	<u>Nutriosio Creek</u>	<u>Headwaters to confluence with the Little Colorado River</u>
<u>LC</u>	<u>Porter Creek</u>	<u>Headwaters to confluence with Show Low Creek</u>
<u>LC</u>	<u>Riggs Creek</u>	<u>Headwaters to Nutriosio Creek</u>
<u>LC</u>	<u>Rio de Flag</u>	<u>Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"</u>
<u>LC</u>	<u>Rudd Creek</u>	<u>Headwaters to confluence with Nutriosio Creek</u>
<u>LC</u>	<u>Rosey Creek</u>	<u>Headwaters to 34°02'28.72"/109°27'24.3"</u>
<u>LC</u>	<u>Scott Reservoir</u>	<u>34°10'31"/109°57'31"</u>
<u>LC</u>	<u>Show Low Creek</u>	<u>Headwaters to confluence with Silver Creek</u>
<u>LC</u>	<u>Show Low Lake</u>	<u>34°11'36"/110°00'12"</u>
<u>LC</u>	<u>Silver Creek</u>	<u>Headwaters to confluence with the Little Colorado River</u>
<u>LC</u>	<u>White Mountain Lake</u>	<u>34°21'57"/109°59'21"</u>
<u>LC</u>	<u>Willow Creek</u>	<u>Headwaters to confluence with Clear Creek</u>
<u>LC</u>	<u>Zuni River</u>	<u>Headwaters to confluence with the Little Colorado River</u>
<u>MG</u>	<u>Agua Fria River</u>	<u>From State Route 169 to Lake Pleasant</u>
<u>MG</u>	<u>Ash Creek</u>	<u>Headwaters to confluence with Tex Canyon</u>
<u>MG</u>	<u>East Maricopa Floodway</u>	<u>From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary</u>
<u>MG</u>	<u>Fain Lake</u>	<u>Town of Prescott Valley Park Lake 34°34'29"/112°21'06"</u>
<u>MG</u>	<u>Gila River</u>	<u>San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam</u>
<u>MG</u>	<u>Gila River (EDW)</u>	<u>From the confluence with the Salt River to Gillespie Dam</u>
<u>MG</u>	<u>Hassayampa Lake</u>	<u>34°25'45"/112°25'33"</u>
<u>MG</u>	<u>Hassayampa River</u>	<u>Below unnamed tributary to the Buckeye Irrigation Company Canal</u>
<u>MG</u>	<u>Hassayampa River</u>	<u>Headwaters to confluence with unnamed tributary at 34°26'09"/112°30'32"</u>
<u>MG</u>	<u>Lake Pleasant</u>	<u>33°53'46"/112°16'29"</u>

MG	<u>Little Ash Creek</u>	<u>Headwaters to confluence with Ash Creek at 34°20'45.74"/112°4'17.26"</u>
MG	<u>Little Sycamore Creek</u>	<u>Headwaters to Sycamore Creek @ 34°21'39.13"/111°58'49.98"</u>
MG	<u>Mineral Creek (diversion tunnel and lined channel)</u>	<u>33°12'24"/110°59'58" to 33°07'56"/110°58'34"</u>
MG	<u>Papago Park South Pond</u>	<u>Curry Road, Tempe 33°26'22"/111°55'55"</u>
MG	<u>Salt River</u>	<u>Verde River to 2 km below Granite Reef Dam</u>
MG	<u>Seven Springs Wash</u>	<u>Headwaters to Unnamed trib @ 33°57'58.66"/111°51'52.07"</u>
MG	<u>Tempe Town Lake</u>	<u>At Mill Avenue Bridge at 33°26'00"/111°56'26"</u>
MG	<u>Turkey Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°19'28"/112°21'33"</u>
SC	<u>Alum Gulch</u>	<u>Below 31°29'17"/110°44'25" to confluence with Sonoita Creek</u>
SC	<u>California Gulch</u>	<u>Headwaters To U.S./Mexico border</u>
SC	<u>Cienega Creek (OAW)</u>	<u>From confluence with Gardner Canyon to USGS gaging station (#09484600)</u>
SC	<u>Cox Gulch</u>	<u>Headwaters to Three R Canyon @ 31°28'28.03"/110°47'14.65"</u>
SC	<u>Holden Canyon Creek</u>	<u>Headwaters to U.S./Mexico border</u>
SC	<u>Julian Wash</u>	<u>Headwaters to confluence with the Santa Cruz River</u>
SC	<u>Nogales Wash</u>	<u>Headwaters to confluence with Potrero Creek</u>
SC	<u>Parker Canyon Creek</u>	<u>Below unnamed tributary to U.S./Mexico border</u>
SC	<u>Rillito Creek</u>	<u>Headwaters to confluence with the Santa Cruz River</u>
SC	<u>Romero Canyon Creek</u>	<u>Below unnamed tributary to confluence with Sutherland Wash</u>
SC	<u>Santa Cruz River</u>	<u>Headwaters to the at U.S./Mexico border</u>
SC	<u>Santa Cruz River</u>	<u>U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"</u>
SC	<u>Santa Cruz River</u>	<u>Tubac Bridge to Agua Nueva WRF outfall at 32°17'04"/111°01'45"</u>
SC	<u>Santa Cruz River (EDW)</u>	<u>Agua Nueva WRF outfall to Baumgartner Road</u>
SC	<u>Sonoita Creek</u>	<u>Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"</u>
SC	<u>Sonoita Creek (EDW)</u>	<u>Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall</u>
SC	<u>Sycamore Canyon</u>	<u>Headwaters to the U.S./Mexico border</u>
SP	<u>Aravaipa Creek</u>	<u>Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River</u>
SP	<u>Aravaipa Creek (OAW)</u>	<u>Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area</u>

SP	<u>Bass Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek</u>
SP	<u>Bear Creek</u>	<u>Headwaters to U.S./Mexico border</u>
SP	<u>Black Draw</u>	<u>Headwaters to the U.S./Mexico border</u>
SP	<u>Carr Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 31°27'01"/110°15'48"</u>
SP	<u>Gold Gulch</u>	<u>Headwaters to U.S./Mexico border</u>
SP	<u>Ramsey Canyon Creek</u>	<u>Below Forest Service Road #110 to confluence with Carr Wash</u>
SP	<u>San Pedro River</u>	<u>U.S./ Mexico Border to Buehman Canyon</u>
SP	<u>San Pedro River</u>	<u>From Buehman canyon to confluence with the Gila River</u>
SP	<u>Whitewater Draw</u>	<u>Headwaters to confluence with unnamed tributary at 31°20'36"/109°43'48"</u>
SP	<u>Whitewater Draw</u>	<u>Below confluence with unnamed tributary to U.S./ Mexico border</u>
SR	<u>Ackre Lake</u>	<u>33°37'01"/109°20'40"</u>
SR	<u>Apache Lake</u>	<u>33°37'23"/111°12'26"</u>
SR	<u>Bear Wallow Creek (OAW)</u>	<u>Headwaters to confluence with the Black River</u>
SR	<u>Beaver Creek</u>	<u>Headwaters to confluence with Black River</u>
SR	<u>Black River</u>	<u>Headwaters to confluence with Salt River</u>
SR	<u>Black River, East Fork</u>	<u>From 33°51'19"/109°18'54" to confluence with the Black River</u>
SR	<u>Black River, North Fork of East Fork</u>	<u>Headwaters to confluence with Boneyard Creek</u>
SR	<u>Black River, West Fork</u>	<u>Headwaters to confluence with the Black River</u>
SR	<u>Boggy Creek</u>	<u>Headwaters to confluence with Centerfire Creek</u>
SR	<u>Boneyard Creek</u>	<u>Headwaters to confluence with Black River, East Fork</u>
SR	<u>Canyon Lake</u>	<u>33°32'44"/111°26'19"</u>
SR	<u>Cherry Creek</u>	<u>Below unnamed tributary to confluence with the Salt River</u>
SR	<u>Conklin Creek</u>	<u>Headwaters to confluence with the Black River</u>
SR	<u>Corduroy Creek</u>	<u>Headwaters to confluence with Fish Creek</u>
SR	<u>Devils Chasm Creek</u>	<u>Below confluence with unnamed tributary to confluence with Cherry Creek</u>
SR	<u>Dipping Vat Reservoir</u>	<u>33°55'47"/109°25'31"</u>
SR	<u>Fish Creek</u>	<u>Headwaters to confluence with the Black River</u>
SR	<u>Haigler Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°12'23"/111°00'15"</u>
SR	<u>Haigler Creek</u>	<u>Below confluence with unnamed tributary to confluence with Tonto Creek</u>

SR	<u>Hannagan Creek</u>	<u>Headwaters to confluence with Beaver Creek</u>
SR	<u>Hay Creek (OAW)</u>	<u>Headwaters to confluence with the Black River, West Fork</u>
SR	<u>Horton Creek</u>	<u>Headwaters to confluence with Tonto Creek</u>
SR	<u>P B Creek</u>	<u>Below Forest Service Road #203 to Cherry Creek</u>
SR	<u>Pinal Creek</u>	<u>From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"</u>
SR	<u>Pinal Creek</u>	<u>From unnamed tributary to confluence with Salt River</u>
SR	<u>Pinto Creek</u>	<u>Headwaters to confluence with unnamed tributary at 33°19'27"/110°54'58"</u>
SR	<u>Roosevelt Lake</u>	<u>33°52'17"/111°00'17"</u>
SR	<u>Rye Creek</u>	<u>Headwaters to confluence with Tonto Creek</u>
SR	<u>Saguaro Lake</u>	<u>33°33'44"/111°30'55"</u>
SR	<u>Salt River</u>	<u>White Mountain Apache Reservation Boundary at 33°48'52"/110°31'33" to Roosevelt Lake</u>
SR	<u>Salt River</u>	<u>Theodore Roosevelt Dam to 2 km below Granite Reef Dam</u>
SR	<u>Thompson Creek</u>	<u>Headwaters to confluence with the West Fork of the Black River</u>
SR	<u>Tonto Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°18'11"/111°04'18"</u>
SR	<u>Tonto Creek</u>	<u>Below confluence with unnamed tributary to Roosevelt Lake</u>
SR	<u>Willow Creek</u>	<u>Headwaters to confluence with Beaver Creek</u>
SR	<u>Workman Creek</u>	<u>Below confluence with Reynolds Creek to confluence with Salome Creek</u>
UG	<u>Apache Creek</u>	<u>Headwaters to confluence with the Gila River</u>
UG	<u>Bitter Creek</u>	<u>Headwaters to confluence with the Gila River</u>
UG	<u>Blue River</u>	<u>Headwaters to confluence with Strayhorse Creek at 33°29'02"/109°12'14"</u>
UG	<u>Blue River</u>	<u>Below confluence with Strayhorse Creek to confluence with San Francisco River</u>
UG	<u>Bob Thomas Creek</u>	<u>Headwaters to Stone Creek 33°51'93"/109°42'52"</u>
UG	<u>Bonita Creek (OAW)</u>	<u>San Carlos Indian Reservation boundary to confluence with the Gila River</u>
UG	<u>Campbell Blue Creek</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>Cave Creek (OAW)</u>	<u>Headwaters to confluence with South Fork Cave Creek</u>
UG	<u>Cave Creek (OAW)</u>	<u>Below confluence with South Fork Cave Creek to Coronado National Forest boundary</u>
UG	<u>Cave Creek, South Fork</u>	<u>Headwaters to confluence with Cave Creek</u>
UG	<u>Deadman Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 32°43'50"/109°49'03"</u>

UG	<u>Eagle Creek</u>	<u>Below confluence with unnamed tributary to confluence with the Gila River</u>
UG	<u>Gila River</u>	<u>New Mexico border to the San Carlos Indian Reservation boundary</u>
UG	<u>Grant Creek</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>Judd Lake</u>	<u>33°51'15"/109°09'35"</u>
UG	<u>K P Creek (OAW)</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>Little Blue Creek</u>	<u>Below confluence with Dutch Blue Creek to confluence with Blue Creek</u>
UG	<u>Luna Lake</u>	<u>33°49'50"/109°05'06"</u>
UG	<u>North Fork Cave Creek</u>	<u>Headwaters to Cave Creek @ 31°52'56.63"/109°12'19.75"</u>
UG	<u>Raspberry Creek</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>San Francisco River</u>	<u>Headwaters to the New Mexico border</u>
UG	<u>San Francisco River</u>	<u>New Mexico border to confluence with the Gila River</u>
UG	<u>San Simon River</u>	<u>Headwaters to confluence with the Gila River</u>
UG	<u>Stone Creek</u>	<u>Headwaters to confluence with the San Francisco River</u>
UG	<u>Thomas Creek</u>	<u>Below confluence with Rousensock Creek to confluence with Blue River</u>
UG	<u>Turkey Creek</u>	<u>Headwaters to confluence with Campbell Blue Creek</u>
VR	<u>Bartlett Lake</u>	<u>33°49'52"/111°37'44"</u>
VR	<u>Beaver Creek</u>	<u>Headwaters to confluence with the Verde River</u>
VR	<u>Bitter Creek</u>	<u>Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"</u>
VR	<u>Bitter Creek</u>	<u>Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River</u>
VR	<u>Dead Horse Lake</u>	<u>34°45'08"/112°00'42"</u>
VR	<u>East Verde River</u>	<u>Headwaters to confluence with Ellison Creek</u>
VR	<u>East Verde River</u>	<u>Below confluence with Ellison Creek to confluence with the Verde River</u>
VR	<u>Fossil Creek (OAW)</u>	<u>Headwaters to confluence with the Verde River</u>
VR	<u>Fossil Springs (OAW)</u>	<u>34°25'24"/111°34'27"</u>
VR	<u>Horseshoe Reservoir</u>	<u>34°00'25"/111°43'36"</u>
VR	<u>Oak Creek (OAW)</u>	<u>Headwaters to confluence with unnamed tributary at 34°59'15"/111°44'47"</u>
VR	<u>Oak Creek (OAW)</u>	<u>Below confluence with unnamed tributary to confluence with Verde River</u>
VR	<u>Spring Creek</u>	<u>Below confluence with unnamed tributary to confluence with Oak Creek</u>
VR	<u>Sullivan Lake</u>	<u>34°51'42"/112°27'51"</u>
VR	<u>Sycamore Creek</u>	<u>Headwaters to confluence with unnamed tributary at 35°03'41"/111°57'31"</u>

VR	<u>Sycamore Creek</u>	<u>Headwaters to confluence with Verde River at 33°37'55"/111°39'58"</u>
VR	<u>Verde River</u>	<u>From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam</u>
VR	<u>Verde River</u>	<u>Below Bartlett Lake Dam to Salt River</u>
VR	<u>West Clear Creek</u>	<u>Headwaters to confluence with Meadow Canyon</u>
VR	<u>West Clear Creek</u>	<u>Below confluence with Meadow Canyon to confluence with the Verde River</u>
VR	<u>Wet Beaver Creek</u>	<u>Below unnamed springs to confluence with Dry Beaver Creek</u>
VR	<u>Willow Creek Reservoir</u>	<u>34°36'17"/112°26'19"</u>

**Table C. Historically Regulated as WOTUS and in Need of Confirmation**

The waters listed in this table have historically been and will continue to be regulated as WOTUS. Notwithstanding its inclusion on the list below, the status of a particular water in this table can be contested by a person in an enforcement or permit proceeding, a challenge to an identification as an impaired water, or a challenge to a proposed TMDL for an impaired water. Any changes to Table C will be made through formal rulemaking.

The waters on this list have their designated uses assigned by Title 18, Chapter 11, Article 1. Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Historically Regulated as WOTUS and in Need of Further Study Table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.

**Watersheds:**

- \_\_\_\_\_ BW = Bill Williams
- \_\_\_\_\_ CG = Colorado – Grand Canyon
- \_\_\_\_\_ CL = Colorado – Lower Gila
- \_\_\_\_\_ LC = Little Colorado
- \_\_\_\_\_ MG = Middle Gila
- \_\_\_\_\_ SC = Santa Cruz – Rio Magdalena – Rio Sonoyta
- \_\_\_\_\_ SP = San Pedro – Willcox Playa – Rio Yaqui
- \_\_\_\_\_ SR = Salt River
- \_\_\_\_\_ UG = Upper Gila
- \_\_\_\_\_ VR = Verde River

**Other Abbreviations:**

WWTP = Wastewater Treatment Plant

Km = kilometers

<b><u>Watershed</u></b>	<b><u>Surface Water</u></b>	<b><u>Segment Description and Location (Latitude and Longitudes are in NAD 83)</u></b>
<u>BW</u>	<u>Alamo Lake</u>	<u>34°14'06"/113°35'00"</u>
<u>BW</u>	<u>Bill Williams River</u>	<u>Alamo Lake to confluence with Colorado River</u>
<u>BW</u>	<u>Blue Tank</u>	<u>34°40'14"/112°58'17"</u>
<u>BW</u>	<u>Boulder Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°41'13"/113°03'37"</u>
<u>BW</u>	<u>Burro Creek</u>	<u>Below confluence with Boulder Creek to confluence with Big Sandy River</u>
<u>BW</u>	<u>Burro Creek (OAW)</u>	<u>Headwaters to confluence with Boulder Creek</u>
<u>BW</u>	<u>Carter Tank</u>	<u>34°52'27"/112°57'31"</u>
<u>BW</u>	<u>Conger Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°45'15"/113°05'46"</u>
<u>BW</u>	<u>Conger Creek</u>	<u>Below confluence with unnamed tributary to confluence with Burro Creek</u>
<u>BW</u>	<u>Copper Basin Wash</u>	<u>Headwaters to confluence with unnamed tributary at 34°28'12"/112°35'33"</u>
<u>BW</u>	<u>Copper Basin Wash</u>	<u>Below confluence with unnamed tributary to confluence with Skull Valley Wash</u>
<u>BW</u>	<u>Cottonwood Canyon</u>	<u>Headwaters to Bear Trap Spring</u>
<u>BW</u>	<u>Cottonwood Canyon</u>	<u>Below Bear Trap Spring to confluence at Sycamore Creek</u>
<u>BW</u>	<u>Date Creek</u>	<u>Headwaters to confluence with Santa Maria River</u>
<u>BW</u>	<u>Knight Creek</u>	<u>Headwaters to confluence with Big Sandy River</u>
<u>BW</u>	<u>Peoples Canyon (OAW)</u>	<u>Headwaters to confluence with Santa Maria River</u>
<u>BW</u>	<u>Red Lake</u>	<u>35°12'18"/113°03'57"</u>
<u>BW</u>	<u>Santa Maria River</u>	<u>Headwaters to Alamo Lake</u>
<u>BW</u>	<u>Trout Creek</u>	<u>Headwaters to confluence with unnamed tributary at 35°06'47"/113°13'01"</u>
<u>CG</u>	<u>Agate Canyon</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Big Springs Tank</u>	<u>36°36'08"/112°21'01"</u>
<u>CG</u>	<u>Boucher Creek</u>	<u>Headwaters to confluence with the Colorado River</u>

<u>CG</u>	<u>Bright Angel Wash</u>	<u>Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"</u>
<u>CG</u>	<u>Bright Angel Wash (EDW)</u>	<u>Grand Canyon National Park South Rim WWTP outfall to Coconino Wash</u>
<u>CG</u>	<u>Bulrush Canyon Wash</u>	<u>Headwaters to confluence with Kanab Creek</u>
<u>CG</u>	<u>Cataract Creek</u>	<u>Headwaters to Santa Fe Reservoir</u>
<u>CG</u>	<u>Cataract Creek</u>	<u>Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/112°11'18"</u>
<u>CG</u>	<u>Cataract Creek</u>	<u>Red Lake Wash to Havasupai Indian Reservation boundary</u>
<u>CG</u>	<u>Cataract Creek (EDW)</u>	<u>City of Williams WWTP outfall to 1 km downstream</u>
<u>CG</u>	<u>Cataract Lake</u>	<u>35°15'04"/112°12'58"</u>
<u>CG</u>	<u>Chuar Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°11'35"/111°52'20"</u>
<u>CG</u>	<u>Chuar Creek</u>	<u>Below unnamed tributary to confluence with the Colorado River</u>
<u>CG</u>	<u>City Reservoir</u>	<u>35°13'57"/112°11'25"</u>
<u>CG</u>	<u>Clear Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°07'33"/112°00'03"</u>
<u>CG</u>	<u>Clear Creek</u>	<u>Below confluence with unnamed tributary to confluence with Colorado River</u>
<u>CG</u>	<u>Coconino Wash (EDW)</u>	<u>South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream</u>
<u>CG</u>	<u>Crystal Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°13'41"/112°11'49"</u>
<u>CG</u>	<u>Deer Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°26'15"/112°28'20"</u>
<u>CG</u>	<u>Detrital Wash</u>	<u>Headwaters to Lake Mead</u>
<u>CG</u>	<u>Dogtown Reservoir</u>	<u>35°12'40"/112°07'54"</u>
<u>CG</u>	<u>Dragon Creek</u>	<u>Headwaters to confluence with Milk Creek</u>
<u>CG</u>	<u>Dragon Creek</u>	<u>Below confluence with Milk Creek to confluence with Crystal Creek</u>
<u>CG</u>	<u>Gonzalez Lake</u>	<u>35°15'26"/112°12'09"</u>
<u>CG</u>	<u>Grand Wash</u>	<u>Headwaters to Colorado River</u>
<u>CG</u>	<u>Grapevine Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Grapevine Wash</u>	<u>Headwaters to Colorado River</u>
<u>CG</u>	<u>Hakatai Canyon</u>	<u>Headwaters to confluence with the Colorado River</u>

<u>CG</u>	<u>Hance Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Hermit Creek</u>	<u>Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"</u>
<u>CG</u>	<u>Horn Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Hualapai Wash</u>	<u>Headwaters to Lake Mead</u>
<u>CG</u>	<u>Jacob Lake</u>	<u>36°42'27"/112°13'50"</u>
<u>CG</u>	<u>Kaibab Lake</u>	<u>35°17'04"/112°09'32"</u>
<u>CG</u>	<u>Kwaqunt Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°13'37"/111°54'50"</u>
<u>CG</u>	<u>Kwaqunt Creek</u>	<u>Below confluence with unnamed tributary to confluence with the Colorado River</u>
<u>CG</u>	<u>Lonetree Canyon Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Matkatamiba Creek</u>	<u>Below Havasupai Indian Reservation boundary to confluence with the Colorado River</u>
<u>CG</u>	<u>Monument Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Nankoweap Creek</u>	<u>Below confluence with unnamed tributary to confluence with Colorado River</u>
<u>CG</u>	<u>National Canyon Creek</u>	<u>Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/112°52'34"</u>
<u>CG</u>	<u>North Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°33'58"/111°55'41"</u>
<u>CG</u>	<u>North Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with Colorado River</u>
<u>CG</u>	<u>Olo Canyon</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Parashant Canyon</u>	<u>Headwaters to confluence with unnamed tributary at 36°21'02"/113°27'56"</u>
<u>CG</u>	<u>Parashant Canyon</u>	<u>Below confluence with unnamed tributary to confluence with the Colorado River</u>
<u>CG</u>	<u>Phantom Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°09'29"/112°08'13"</u>
<u>CG</u>	<u>Red Canyon Creek</u>	<u>Headwaters to confluence with the Colorado River '</u>
<u>CG</u>	<u>Roaring Springs</u>	<u>36°11'45"/112°02'06"</u>
<u>CG</u>	<u>Roaring Springs Creek</u>	<u>Headwaters to confluence with Bright Angel Creek</u>
<u>CG</u>	<u>Royal Arch Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Ruby Canyon</u>	<u>Headwaters to confluence with the Colorado River</u>
<u>CG</u>	<u>Russell Tank</u>	<u>35°52'21"/111°52'45"</u>
<u>CG</u>	<u>Saddle Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°21'36"/112°22'43"</u>

CG	<u>Saddle Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with Colorado River</u>
CG	<u>Santa Fe Reservoir</u>	<u>35°14'31"/112°11'10"</u>
CG	<u>Sapphire Canyon</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>Serpentine Canyon</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>Shinumo Creek</u>	<u>Headwaters to confluence with unnamed tributary at 36°18'18"/112°18'07"</u>
CG	<u>Slate Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>Spring Canyon Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>Trail Canyon Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>Transept Canyon</u>	<u>Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"</u>
CG	<u>Transept Canyon</u>	<u>From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek</u>
CG	<u>Transept Canyon (EDW)</u>	<u>Grand Canyon National Park North Rim WWTP outfall to 1 km downstream</u>
CG	<u>Travertine Canyon Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>Turquoise Canyon</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>Unkar Creek</u>	<u>Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River</u>
CG	<u>Unnamed Wash to Cedar Canyon (EDW)</u>	<u>Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/111°49'13" to confluence with Cedar Canyon</u>
CG	<u>Unnamed Wash to Spring Valley Wash (EDW)</u>	<u>Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash</u>
CG	<u>Vishnu Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>Warm Springs Creek</u>	<u>Headwaters to confluence with the Colorado River</u>
CG	<u>West Cataract Creek</u>	<u>Headwaters to confluence with Cataract Creek</u>
CL	<u>Columbus Wash</u>	<u>Headwaters to confluence with the Gila River</u>
CL	<u>Holy Moses Wash</u>	<u>Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"</u>
CL	<u>Holy Moses Wash</u>	<u>From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash</u>
CL	<u>Holy Moses Wash (EDW)</u>	<u>City of Kingman Downtown WWTP outfall to 3 km downstream</u>

<u>CL</u>	<u>Mohave Wash</u>	<u>Headwaters to Lower Colorado River</u>
<u>CL</u>	<u>Painted Rock (Borrow Pit) Lake</u>	<u>33°04'55"/113°01'17"</u>
<u>CL</u>	<u>Quigley Pond</u>	<u>32°43'40"/113°57'44"</u>
<u>CL</u>	<u>Redondo Lake</u>	<u>32°44'32"/114°29'03"</u>
<u>CL</u>	<u>Sacramento Wash</u>	<u>Headwaters to Topock Marsh</u>
<u>CL</u>	<u>Sawmill Canyon</u>	<u>Headwaters to abandoned gaging station at 35°09'45"/113°57'56"</u>
<u>CL</u>	<u>Sawmill Canyon</u>	<u>Below abandoned gaging station to confluence with Holy Moses Wash</u>
<u>CL</u>	<u>Tyson Wash (EDW)</u>	<u>Town of Quartzsite WWTP outfall at 33°42'39"/ 114°13'10" to 1 km downstream</u>
<u>CL</u>	<u>Wellton Canal</u>	<u>Wellton-Mohawk Irrigation District</u>
<u>CL</u>	<u>Yuma Area Canals</u>	<u>Above municipal water treatment plant intakes</u>
<u>CL</u>	<u>Yuma Area Canals</u>	<u>Below municipal water treatment plant intakes and all drains</u>
<u>LC</u>	<u>Als Lake</u>	<u>35°02'10"/111°25'17"</u>
<u>LC</u>	<u>Ashurst Lake</u>	<u>35°01'06"/111°24'18"</u>
<u>LC</u>	<u>Atcheson Reservoir</u>	<u>33°59'59"/109°20'43"</u>
<u>LC</u>	<u>Barbershop Canyon Creek</u>	<u>Headwaters to confluence with East Clear Creek</u>
<u>LC</u>	<u>Bear Canyon Creek</u>	<u>Headwaters to confluence with General Springs Canyon</u>
<u>LC</u>	<u>Bear Canyon Creek</u>	<u>Headwaters to confluence with Willow Creek</u>
<u>LC</u>	<u>Bear Canyon Lake</u>	<u>34°24'00"/111°00'06"</u>
<u>LC</u>	<u>Becker Lake</u>	<u>34°09'11"/109°18'23"</u>
<u>LC</u>	<u>Billy Creek</u>	<u>Headwaters to confluence with Show Low Creek</u>
<u>LC</u>	<u>Black Canyon</u>	<u>Headwaters to confluence with Chevelon Creek</u>
<u>LC</u>	<u>Bow and Arrow Wash</u>	<u>Headwaters to confluence with Rio de Flag</u>
<u>LC</u>	<u>Buck Springs Canyon Creek</u>	<u>Headwaters to confluence with Leonard Canyon Creek</u>
<u>LC</u>	<u>Bunch Reservoir</u>	<u>34°02'20"/109°26'48"</u>
<u>LC</u>	<u>Carnero Lake</u>	<u>34°06'57"/109°31'42"</u>
<u>LC</u>	<u>Chevelon Creek, West Fork</u>	<u>Headwaters to confluence with Chevelon Creek</u>
<u>LC</u>	<u>Chilson Tank</u>	<u>34°51'43"/111°22'54"</u>
<u>LC</u>	<u>Coconino Reservoir</u>	<u>35°00'05"/111°24'10"</u>
<u>LC</u>	<u>Colter Creek</u>	<u>Headwaters to confluence with Nutrioso Creek</u>

LC	<u>Concho Creek</u>	<u>Headwaters to confluence with Carrizo Wash</u>
LC	<u>Concho Lake</u>	<u>34°26'37"/109°37'40"</u>
LC	<u>Cow Lake</u>	<u>34°53'14"/111°18'51"</u>
LC	<u>Crisis Lake (Snake Tank #2)</u>	<u>34°47'51"/111°17'32"</u>
LC	<u>Dane Canyon Creek</u>	<u>Headwaters to confluence with Barbershop Canyon Creek</u>
LC	<u>Daves Tank</u>	<u>34°44'22"/111°17'15"</u>
LC	<u>Deep Lake</u>	<u>35°03'34"/111°25'00"</u>
LC	<u>Ducksnest Lake</u>	<u>34°59'14"/111°23'57"</u>
LC	<u>Estates at Pine Canyon lakes (EDW)</u>	<u>35°09'32"/111°38'26"</u>
LC	<u>Fish Creek</u>	<u>Headwaters to confluence with the Little Colorado River</u>
LC	<u>General Springs Canyon Creek</u>	<u>Headwaters to confluence with East Clear Creek</u>
LC	<u>Geneva Reservoir</u>	<u>34°01'45"/109°31'46"</u>
LC	<u>Hall Creek</u>	<u>Headwaters to confluence with the Little Colorado River</u>
LC	<u>Hart Canyon Creek</u>	<u>Headwaters to confluence with Willow Creek</u>
LC	<u>Hay Lake</u>	<u>34°00'11"/109°25'57"</u>
LC	<u>Hog Wallow Lake</u>	<u>33°58'57"/109°25'39"</u>
LC	<u>Horse Lake</u>	<u>35°03'55"/111°27'50"</u>
LC	<u>Hulsey Creek</u>	<u>Headwaters to confluence with Nutrioso Creek</u>
LC	<u>Hulsey Lake</u>	<u>33°55'58"/109°09'40"</u>
LC	<u>Humphrey Lake (EDW)</u>	<u>35°11'51"/111°35'19"</u>
LC	<u>Indian Lake</u>	<u>35°00'39"/111°22'41"</u>
LC	<u>Jacks Canyon</u>	<u>Headwaters to confluence with the Little Colorado River</u>
LC	<u>Jarvis Lake</u>	<u>33°58'59"/109°12'36"</u>
LC	<u>Kinnikinick Lake</u>	<u>34°53'53"/111°18'18"</u>
LC	<u>Knoll Lake</u>	<u>34°25'38"/111°05'13"</u>
LC	<u>Lake Mary, Lower</u>	<u>35°06'21"/111°34'38"</u>
LC	<u>Lake Mary, Upper</u>	<u>35°03'23"/111°28'34"</u>
LC	<u>Lake of the Woods</u>	<u>34°09'40"/109°58'47"</u>
LC	<u>Lee Valley Creek (OAW)</u>	<u>Headwaters to Lee Valley Reservoir</u>
LC	<u>Lee Valley Reservoir</u>	<u>33°56'29"/109°30'04"</u>

<u>LC</u>	<u>Leonard Canyon Creek</u>	<u>Headwaters to confluence with Clear Creek</u>
<u>LC</u>	<u>Leonard Canyon Creek, East Fork</u>	<u>Headwaters to confluence with Leonard Canyon Creek</u>
<u>LC</u>	<u>Leonard Canyon Creek, Middle Fork</u>	<u>Headwaters to confluence with Leonard Canyon, West Fork</u>
<u>LC</u>	<u>Leonard Canyon Creek, West Fork</u>	<u>Headwaters to confluence with Leonard Canyon, East Fork</u>
<u>LC</u>	<u>Leroux Wash, tributary to Little Colorado River</u>	<u>From City of Holbrook-Painted Mesa WRF outfall at 34° 54' 30", -110° 11' 36" to Little Colorado River. The outfall discharges into Leroux Wash. All reaches of the Little Colorado River between the outfall to the Colorado River are perennial or intermittent.</u>
<u>LC</u>	<u>Little Colorado River, West Fork (OAW)</u>	<u>Headwaters to Government Springs</u>
<u>LC</u>	<u>Little George Reservoir</u>	<u>34°00'37"/109°19'15"</u>
<u>LC</u>	<u>Little Mormon Lake</u>	<u>34°17'00"/109°58'06"</u>
<u>LC</u>	<u>Long Lake, Lower</u>	<u>34°47'16"/111°12'40"</u>
<u>LC</u>	<u>Long Lake, Upper</u>	<u>35°00'08"/111°21'23"</u>
<u>LC</u>	<u>Long Tom Tank</u>	<u>34°20'35"/110°49'22"</u>
<u>LC</u>	<u>Lower Walnut Canyon Lake (EDW)</u>	<u>35°12'04"/111°34'07"</u>
<u>LC</u>	<u>Marshall Lake</u>	<u>35°07'18"/111°32'07"</u>
<u>LC</u>	<u>McKay Reservoir</u>	<u>34°01'27"/109°13'48"</u>
<u>LC</u>	<u>Merritt Draw Creek</u>	<u>Headwaters to confluence with Barbershop Canyon Creek</u>
<u>LC</u>	<u>Mexican Hay Lake</u>	<u>34°01'58"/109°21'25"</u>
<u>LC</u>	<u>Milk Creek</u>	<u>Headwaters to confluence with Hulsey Creek</u>
<u>LC</u>	<u>Miller Canyon Creek</u>	<u>Headwaters to confluence with East Clear Creek</u>
<u>LC</u>	<u>Miller Canyon Creek, East Fork</u>	<u>Headwaters to confluence with Miller Canyon Creek</u>
<u>LC</u>	<u>Morton Lake</u>	<u>34°53'37"/111°17'41"</u>
<u>LC</u>	<u>Mud Lake</u>	<u>34°55'19"/111°21'29"</u>
<u>LC</u>	<u>Ned Lake (EDW)</u>	<u>34°17'17"/110°03'22"</u>
<u>LC</u>	<u>Norton Reservoir</u>	<u>34°03'57"/109°31'27"</u>
<u>LC</u>	<u>Paddy Creek</u>	<u>Headwaters to confluence with Nutrioso Creek</u>
<u>LC</u>	<u>Pierce Seep</u>	<u>34°23'39"/110°31'17"</u>
<u>LC</u>	<u>Pine Tank</u>	<u>34°46'49"/111°17'21"</u>
<u>LC</u>	<u>Pintail Lake (EDW)</u>	<u>34°18'05"/110°01'21"</u>

LC	<u>Puerco River</u>	<u>Headwaters to confluence with the Little Colorado River</u>
LC	<u>Puerco River (EDW)</u>	<u>Sanders Unified School District WWTP outfall at 35°12'52"/109°19'40" to 0.5 km downstream</u>
LC	<u>Rainbow Lake</u>	<u>34°09'00"/109°59'09"</u>
LC	<u>Reagan Reservoir</u>	<u>34°02'09"/109°08'41"</u>
LC	<u>Rio de Flag (EDW)</u>	<u>From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash</u>
LC	<u>River Reservoir</u>	<u>34°02'01"/109°26'07"</u>
LC	<u>Rogers Reservoir</u>	<u>33°56'30"/109°16'20"</u>
LC	<u>Russel Reservoir</u>	<u>33°59'29"/109°20'01"</u>
LC	<u>San Salvador Reservoir</u>	<u>33°58'51"/109°19'55"</u>
LC	<u>Slade Reservoir</u>	<u>33°59'41"/109°20'26"</u>
LC	<u>Soldiers Annex Lake</u>	<u>34°47'15"/111°13'51"</u>
LC	<u>Soldiers Lake</u>	<u>34°47'47"/111°14'04"</u>
LC	<u>Spaulding Tank</u>	<u>34°30'17"/111°02'06"</u>
LC	<u>St Johns Reservoir (Little Reservoir)</u>	<u>34°29'10"/109°22'06"</u>
LC	<u>Telephone Lake (EDW)</u>	<u>34°17'35"/110°02'42"</u>
LC	<u>Tremaine Lake</u>	<u>34°46'02"/111°13'51"</u>
LC	<u>Tunnel Reservoir</u>	<u>34°01'53"/109°26'34"</u>
LC	<u>Turkey Draw (EDW)</u>	<u>High Country Pines II WWTP outfall at 33°25'35"/ 110°38'13" to confluence with Black Canyon Creek</u>
LC	<u>Unnamed Wash to Pierce Wash (EDW)</u>	<u>Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep</u>
LC	<u>Unnamed wash, tributary to Rio de Flag River (Bow and Arrow Wash)</u>	<u>Treated municipal wastewater is piped from the Rio de Flag WWTP through a city-wide reuse system to the main effluent storage pond that is in an unnamed wash.</u>
LC	<u>Walnut Creek</u>	<u>Headwaters to confluence with Billy Creek</u>
LC	<u>Water Canyon Creek</u>	<u>Headwaters to confluence with the Little Colorado River</u>
LC	<u>Whale Lake (EDW)</u>	<u>35°11'13"/111°35'21"</u>
LC	<u>Whipple Lake</u>	<u>34°16'49"/109°58'29"</u>
LC	<u>White Mountain Reservoir</u>	<u>34°00'12"/109°30'39"</u>
LC	<u>Willow Creek</u>	<u>Headwaters to confluence with Clear Creek</u>
LC	<u>Willow Springs Canyon Creek</u>	<u>Headwaters to confluence with Chevelon Creek</u>

LC	<u>Willow Springs Lake</u>	<u>34°18'13"/110°52'16"</u>
LC	<u>Woodland Reservoir</u>	<u>34°07'35"/109°57'01"</u>
LC	<u>Woods Canyon Creek</u>	<u>Headwaters to confluence with Chevelon Creek</u>
LC	<u>Woods Canyon Lake</u>	<u>34°20'09"/110°56'45"</u>
MG	<u>Agua Fria River</u>	<u>Headwaters to confluence with unnamed tributary at 34°35'14"/112°16'18"</u>
MG	<u>Agua Fria River</u>	<u>Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/112°18'32"</u>
MG	<u>Agua Fria River</u>	<u>Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"</u>
MG	<u>Agua Fria River</u>	<u>From City of Avondale WWTP outfall to confluence with Gila River</u>
MG	<u>Agua Fria River (EDW)</u>	<u>Below confluence with unnamed tributary to State Route 169</u>
MG	<u>Agua Fria River (EDW)</u>	<u>From City of El Mirage WWTP outfall to 2 km downstream</u>
MG	<u>Andorra Wash</u>	<u>Headwaters to confluence with Cave Creek Wash</u>
MG	<u>Antelope Creek</u>	<u>Headwaters to confluence with Martinez Creek</u>
MG	<u>Arlington Canal</u>	<u>From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/112°46'15"</u>
MG	<u>Arnett Creek</u>	<u>Headwaters to Queen Creek @ 33°16'43.24"/111°10'12.49"</u>
MG	<u>Ash Creek</u>	<u>Headwaters to confluence with Tex Canyon</u>
MG	<u>Beehive Tank</u>	<u>32°52'37"/111°02'20"</u>
MG	<u>Big Bug Creek</u>	<u>Headwaters to confluence with Eugene Gulch</u>
MG	<u>Big Bug Creek</u>	<u>Below confluence with Eugene Gulch to confluence with Agua Fria River</u>
MG	<u>Black Canyon Creek</u>	<u>Headwaters to confluence with the Agua Fria River</u>
MG	<u>Blind Indian Creek</u>	<u>Headwaters to confluence with the Hassayampa River</u>
MG	<u>Cash Gulch</u>	<u>Headwaters to Jersey Gulch @ 34°25'31.39"/112°25'30.96"</u>
MG	<u>Cave Creek</u>	<u>Headwaters to the Cave Creek Dam</u>
MG	<u>Cave Creek</u>	<u>Cave Creek Dam to the Arizona Canal</u>
MG	<u>Centennial Wash</u>	<u>Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"</u>
MG	<u>Centennial Wash Ponds</u>	<u>33°54'52"/113°23'47"</u>

MG	<u>Chaparral Park Lake</u>	<u>Hayden Road &amp; Chaparral Road, Scottsdale at 33°30'40"/111°54'27"</u>
MG	<u>Corgett Wash</u>	<u>From Corgett Wash WRF outfall at 33°21'42", -112°27'05" to Gila River. The discharge point is 0.5 miles from the ephemeral conveyance Corgett Wash. The Gila River is then 1.5 miles downstream from Corgett Wash.</u>
MG	<u>Devils Canyon</u>	<u>Headwaters to confluence with Mineral Creek</u>
MG	<u>Eldorado Park Lake</u>	<u>Miller Road &amp; Oak Street, Tempe at 33°28'25"/ 111°54'53"</u>
MG	<u>Eugene Gulch</u>	<u>Headwaters to Big Bug Creek @ 34°27'11.51"/112°18'30.95"</u>
MG	<u>French Gulch</u>	<u>Headwaters to confluence with Hassayampa River</u>
MG	<u>Galena Gulch</u>	<u>Headwaters to confluence with the Agua Fria River</u>
MG	<u>Galloway Wash (EDW)</u>	<u>Town of Cave Creek WWTP outfall at 33°50'15"/ 111°57'35" to confluence with Cave Creek</u>
MG	<u>Gila River</u>	<u>Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"</u>
MG	<u>Gila River</u>	<u>Felix Road to the Gila River Indian Reservation boundary</u>
MG	<u>Gila River</u>	<u>Gillespie Dam to confluence with Painted Rock Dam</u>
MG	<u>Gila River (EDW)</u>	<u>Town of Florence WWTP outfall to Felix Road</u>
MG	<u>Groom Creek</u>	<u>Headwaters to confluence with the Hassayampa River</u>
MG	<u>Hassayampa River</u>	<u>Below confluence with unnamed tributary to confluence with unnamed tributary at 33°51'52"/112°39'56".</u>
MG	<u>Hassayampa River</u>	<u>Below Buckeye Irrigation Company canal to the Gila River</u>
MG	<u>Hassayampa River</u>	<u>From City of Buckeye-Palo Verde Road WWTP outfall at 33° 23' 54.3", -112° 40' 33.7" to Buckeye Canal</u>
MG	<u>Horsethief Lake</u>	<u>34°09'42"/112°17'57"</u>
MG	<u>Indian Bend Wash</u>	<u>Headwaters to confluence with the Salt River</u>
MG	<u>Indian Bend Wash Lakes</u>	<u>Scottsdale at 33°30'32"/111°54'24"</u>
MG	<u>Indian School Park Lake</u>	<u>Indian School Road &amp; Hayden Road, Scottsdale at 33°29'39"/111°54'37"</u>
MG	<u>Jersey Gulch</u>	<u>Headwaters to Hassayampa River @ 34°25'40.16"/112°25'45.64"</u>
MG	<u>Kiwanis Park Lake</u>	<u>6000 South Mill Avenue, Tempe at 33°22'27"/111°56'22"</u>

MG	<u>Lake Pleasant, Lower</u>	<u>33°50'32"/112°16'03"</u>
MG	<u>Lion Canyon</u>	<u>Headwaters to confluence with Weaver Creek</u>
MG	<u>Lynx Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°34'29"/112°21'07"</u>
MG	<u>Lynx Creek</u>	<u>Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River</u>
MG	<u>Lynx Lake</u>	<u>34°31'07"/112°23'07"</u>
MG	<u>Martinez Canyon</u>	<u>Headwaters to confluence with Box Canyon</u>
MG	<u>Martinez Creek</u>	<u>Headwaters to confluence with the Hassayampa River</u>
MG	<u>McKellips Park Lake</u>	<u>Miller Road &amp; McKellips Road, Scottsdale at 33°27'14"/111°54'49"</u>
MG	<u>McMicken Wash (EDW)</u>	<u>City of Peoria Jomax WWTP outfall at 33°43'31"/112°20'15" to confluence with Agua Fria River</u>
MG	<u>Mineral Creek</u>	<u>Headwaters to 33°12'34"/110°59'58"</u>
MG	<u>Mineral Creek</u>	<u>End of diversion channel to confluence with Gila River</u>
MG	<u>Minnehaha Creek</u>	<u>Headwaters to confluence with the Hassayampa River</u>
MG	<u>Money Metals Trib</u>	<u>Headwaters to Unnamed Trib (UB1)</u>
MG	<u>New River</u>	<u>Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"</u>
MG	<u>New River</u>	<u>Below Interstate 17 to confluence with Agua Fria River</u>
MG	<u>Painted Rock Reservoir</u>	<u>33°04'23"/113°00'38"</u>
MG	<u>Papago Park Ponds</u>	<u>Galvin Parkway, Phoenix at 33°27'15"/111°56'45"</u>
MG	<u>Perry Mesa Tank</u>	<u>34°11'03"/112°02'01"</u>
MG	<u>Phoenix Area Canals</u>	<u>Granite Reef Dam to all municipal WTP intakes</u>
MG	<u>Phoenix Area Canals</u>	<u>Below municipal WTP intakes and all other locations</u>
MG	<u>Picacho Reservoir</u>	<u>32°51'10"/111°28'25"</u>
MG	<u>Poland Creek</u>	<u>Headwaters to confluence with Lorena Gulch</u>
MG	<u>Poland Creek</u>	<u>Below confluence with Lorena Gulch to confluence with Black Canyon Creek</u>
MG	<u>Queen Creek</u>	<u>Headwaters to the Town of Superior WWTP outfall at 33°16'33"/111°07'44"</u>
MG	<u>Queen Creek</u>	<u>Below Potts Canyon to ' Whitlow Dam</u>
MG	<u>Queen Creek</u>	<u>Below Whitlow Dam to confluence with Gila River</u>

MG	<u>Queen Creek (EDW)</u>	<u>Below Town of Superior WWTP outfall to confluence with Potts Canyon</u>
MG	<u>Salt River</u>	<u>2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"</u>
MG	<u>Salt River</u>	<u>Below Tempe Town Lake to Interstate 10 bridge</u>
MG	<u>Salt River</u>	<u>Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at 33°24'44"/112°07'59"</u>
MG	<u>Salt River (EDW)</u>	<u>City of Mesa NW WRF outfall to Tempe Town Lake</u>
MG	<u>Salt River (EDW)</u>	<u>From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River</u>
MG	<u>Siphon Draw (EDW)</u>	<u>Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream</u>
MG	<u>Sycamore Creek</u>	<u>Headwaters to confluence with Tank Canyon</u>
MG	<u>Sycamore Creek</u>	<u>Below confluence with Tank Canyon to confluence with Agua Fria River</u>
MG	<u>The Lake Tank</u>	<u>32°54'14"/111°04'15"</u>
MG	<u>Tule Creek</u>	<u>Headwaters to confluence with the Agua Fria River</u>
MG	<u>Turkey Creek</u>	<u>Below confluence with unnamed tributary to confluence with Poland Creek</u>
MG	<u>Unnamed Trib (UQ2) to Queen Creek</u>	<u>Headwaters to Queen Creek @ 33°18'26.15"/111°04'19.3"</u>
MG	<u>Unnamed Trib (UQ3) to Queen Creek</u>	<u>Headwaters to Queen Creek @ 33°18'33.75"/111°04'02.61"</u>
MG	<u>Unnamed Trib to Big Bug Creek (UB1)</u>	<u>Headwaters to Big Bug Creek @ 34°25'38.86"/112°22'29.32"</u>
MG	<u>Unnamed Trib to Eugene Gulch</u>	<u>Headwaters to Eugene Gulch @ 34°27'34.6"/112°20'24.53"</u>
MG	<u>Unnamed Trib to Lynx Creek</u>	<u>Headwaters to Superior Mining Div. Outfall @ Lynx Creek @ 34°27'10.57"/112°23'14.22"</u>
MG	<u>Unnamed tributary to Deadman's Wash</u>	<u>From EPCOR Water Anthem Water Campus WWTP outfall at 33° 50' 47.9", -112° 08' 25.6" to Deadman's Wash</u>
MG	<u>Unnamed tributary to Gila River (EDW)</u>	<u>Gila Bend WWTP outfall to confluence with the Gila River</u>
MG	<u>Unnamed tributary to Gila River (EDW)</u>	<u>North Florence WWTP outfall at 33°03'50"/ 111°23'13" to confluence with Gila River</u>

MG	<u>Unnamed tributary to the Agua Fria River</u>	<u>From Softwinds WWTP outfall at 34° 32' 43", -112° 14' 21" to the Agua Fria River. Discharges to Agua Fria which is a jurisdictional tributary to Lake Pleasant (TNW)</u>
MG	<u>Unnamed tributary to Winters Wash</u>	<u>From Balterra WWTP outfall at 33° 29' 45", -112° 55' 10" to Winters Wash</u>
MG	<u>Unnamed Wash (EDW)</u>	<u>Luke Air Force Base WWTP outfall at 33°32'21"/112°19'15" to confluence with the Agua Fria River</u>
MG	<u>Unnamed Wash (EDW)</u>	<u>Town of Prescott Valley WWTP outfall at 34°35'16"/ 112°16'18" to confluence with the Agua Fria River</u>
MG	<u>Unnamed Wash (EDW)</u>	<u>Town of Cave Creek WRF outfall at 33°48'02"/ 111°59'22" to confluence with Cave Creek</u>
MG	<u>Unnamed wash, tributary to Black Canyon Creek</u>	<u>From Black Canyon Ranch RV Resort WWTP outfall to Agua Fria River.</u>
MG	<u>Unnamed wash, tributary to Queen Creek</u>	<u>Queen Creek, AZ15050100-013B is closest WBID to outfall coordinates</u>
MG	<u>Unnamed wash, tributary to Waterman Wash</u>	<u>The Rainbow Valley outfall discharges to an unnamed wash to Waterman wash to the Gila River.</u>
MG	<u>Wagner Wash (EDW)</u>	<u>City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km downstream</u>
MG	<u>Walnut Canyon Creek</u>	<u>Headwaters to confluence with the Gila River</u>
MG	<u>Weaver Creek</u>	<u>Headwaters to confluence with Antelope Creek, tributary to Martinez Creek</u>
MG	<u>White Canyon</u>	<u>Headwaters to confluence with Walnut Canyon Creek</u>
MG	<u>Yavapai Lake (EDW)</u>	<u>Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash</u>
SC	<u>Agua Caliente Lake</u>	<u>12325 East Roger Road, Tucson 32°16'51"/ 110°43'52"</u>
SC	<u>Agua Caliente Wash</u>	<u>Headwaters to confluence with Soldier Trail</u>
SC	<u>Agua Caliente Wash</u>	<u>Below Soldier Trail to confluence with Tanque Verde Creek</u>
SC	<u>Aquirre Wash</u>	<u>From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"</u>
SC	<u>Alambre Wash</u>	<u>Headwaters to confluence with Brawley Wash</u>
SC	<u>Alamo Wash</u>	<u>Headwaters to confluence with Rillito Creek</u>
SC	<u>Altar Wash</u>	<u>Headwaters to confluence with Brawley Wash</u>
SC	<u>Alum Gulch</u>	<u>Headwaters to 31°28'20"/110°43'51"</u>
SC	<u>Alum Gulch</u>	<u>From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"</u>

SC	<u>Arivaca Creek</u>	<u>Headwaters to confluence with Altar Wash</u>
SC	<u>Arivaca Lake</u>	<u>31°31'52"/111°15'06"</u>
SC	<u>Atterbury Wash</u>	<u>Headwaters to confluence with Pantano Wash</u>
SC	<u>Bear Grass Tank</u>	<u>31°33'01"/111°11'03"</u>
SC	<u>Big Wash</u>	<u>Headwaters to confluence with Cañada del Oro</u>
SC	<u>Black Wash (EDW)</u>	<u>Pima County WWMD Avra Valley WWTP outfall at 32°09'58"/111°11'17" to confluence with Brawley Wash</u>
SC	<u>Bog Hole Tank</u>	<u>31°28'36"/110°37'09"</u>
SC	<u>Brawley Wash</u>	<u>Headwaters to confluence with Los Robles Wash</u>
SC	<u>Cañada del Oro</u>	<u>Headwaters to State Route 77</u>
SC	<u>Cañada del Oro</u>	<u>Below State Route 77 to confluence with the Santa Cruz River</u>
SC	<u>Cienega Creek</u>	<u>Headwaters to confluence with Gardner Canyon</u>
SC	<u>Davidson Canyon</u>	<u>Headwaters to unnamed spring at 31°59'00"/ 110°38'49"</u>
SC	<u>Davidson Canyon (OAW)</u>	<u>From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"</u>
SC	<u>Davidson Canyon (OAW)</u>	<u>Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"</u>
SC	<u>Davidson Canyon (OAW)</u>	<u>From unnamed spring to confluence with Cienega Creek</u>
SC	<u>Empire Gulch</u>	<u>Headwaters to unnamed spring at 31°47'18"/ 110°38'17"</u>
SC	<u>Empire Gulch</u>	<u>From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"</u>
SC	<u>Empire Gulch</u>	<u>From 31°47'03"/110°37'35" to 31°47'05"/ 110°36'58"</u>
SC	<u>Empire Gulch</u>	<u>From 31°47'05"/110°36'58" to confluence with Cienega Creek</u>
SC	<u>Flux Canyon</u>	<u>Headwaters to confluence with Alum Gulch</u>
SC	<u>Gardner Canyon Creek</u>	<u>Headwaters to confluence with Sawmill Canyon</u>
SC	<u>Gardner Canyon Creek</u>	<u>Below Sawmill Canyon to confluence with Cienega Creek</u>
SC	<u>Greene Wash</u>	<u>Santa Cruz River to the Tohono O'odham Indian Reservation boundary</u>
SC	<u>Greene Wash</u>	<u>Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/ 111°56'48"</u>
SC	<u>Harshaw Creek</u>	<u>Headwaters to confluence with Sonoita Creek at</u>

SC	<u>Hit Tank</u>	<u>32°43'57"/111°03'18"</u>
SC	<u>Holden Canyon Creek</u>	<u>Headwaters to U.S./Mexico border</u>
SC	<u>Huachuca Tank</u>	<u>31°21'11"/110°30'18"</u>
SC	<u>Humboldt Canyon</u>	<u>Headwaters to Alum Gulch @ 31°28'25.84"/110°44'01.57"</u>
SC	<u>Julian Wash</u>	<u>Headwaters to confluence with the Santa Cruz River</u>
SC	<u>Kennedy Lake</u>	<u>Mission Road &amp; Ajo Road, Tucson at 32°10'49"/ 111°00'27"</u>
SC	<u>Lakeside Lake</u>	<u>8300 East Stella Road, Tucson at 32°11'11"/ 110°49'00"</u>
SC	<u>Lemmon Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 32°23'48"/110°47'49"</u>
SC	<u>Lemmon Canyon Creek</u>	<u>Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek</u>
SC	<u>Los Robles Wash</u>	<u>Headwaters to confluence with the Santa Cruz River</u>
SC	<u>Madera Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 31°43'42"/110°52'51"</u>
SC	<u>Madera Canyon Creek</u>	<u>Below unnamed tributary at 31°43'42"/110°52'51 to confluence with the Santa Cruz River</u>
SC	<u>Mattie Canyon</u>	<u>Headwaters to confluence with Cienega Creek</u>
SC	<u>Oak Tree Canyon</u>	<u>Headwaters to confluence with Cienega Creek</u>
SC	<u>Palisade Canyon</u>	<u>Headwaters to confluence with unnamed tributary at 32°22'33"/110°45'31"</u>
SC	<u>Palisade Canyon</u>	<u>Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon</u>
SC	<u>Pantano Wash</u>	<u>Headwaters to confluence with Tanque Verde Creek</u>
SC	<u>Parker Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 31°24'17"/110°28'47"</u>
SC	<u>Parker Canyon Lake</u>	<u>31°25'35"/110°27'15"</u>
SC	<u>Patagonia Lake</u>	<u>31°29'56"/110°50'49"</u>
SC	<u>Peña Blanca Lake</u>	<u>31°24'15"/111°05'12"</u>
SC	<u>Potrero Creek</u>	<u>Headwaters to Interstate 19</u>
SC	<u>Potrero Creek</u>	<u>Below Interstate 19 to confluence with Santa Cruz River</u>
SC	<u>Puertocito Wash</u>	<u>Headwaters to confluence with Altar Wash</u>
SC	<u>Quitobaquito Spring</u>	<u>(Pond and Springs) 31°56'39"/113°01'06"</u>
SC	<u>Redrock Canyon Creek</u>	<u>Headwaters to confluence with Harshaw Creek</u>
SC	<u>Rillito Creek</u>	<u>Headwaters to confluence with the Santa Cruz River</u>

SC	<u>Romero Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 32°24'29"/110°50'39"</u>
SC	<u>Rose Canyon Creek</u>	<u>Headwaters to confluence with Sycamore Canyon</u>
SC	<u>Rose Canyon Lake</u>	<u>32°23'13"/110°42'38"</u>
SC	<u>Ruby Lakes</u>	<u>31°26'29"/111°14'22"</u>
SC	<u>Sabino Creek</u>	<u>Headwaters to 32°23'20"/110°47'06"</u>
SC	<u>Sabino Creek</u>	<u>Below 32°23'20"/110°47'06" to confluence with Tanque Verde River</u>
SC	<u>Salero Ranch Tank</u>	<u>31°35'43"/110°53'25"</u>
SC	<u>Santa Cruz River</u>	<u>Headwaters to the at U.S./Mexico border</u>
SC	<u>Santa Cruz River</u>	<u>Baumgartner Road to the Ak Chin Indian Reservation boundary</u>
SC	<u>Santa Cruz River (EDW)</u>	<u>Nogales International WWTP outfall to the Tubac Bridge</u>
SC	<u>Santa Cruz River, West Branch</u>	<u>Headwaters to the confluence with Santa Cruz River</u>
SC	<u>Santa Cruz Wash, North Branch</u>	<u>Headwaters to City of Casa Grande WRF outfall at 32°54'57"/111°47'13"</u>
SC	<u>Santa Cruz Wash, North Branch (EDW)</u>	<u>City of Casa Grande WRF outfall to 1 km downstream</u>
SC	<u>Santa Rosa Wash</u>	<u>Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation</u>
SC	<u>Santa Rosa Wash (EDW)</u>	<u>Palo Verde Utilities CO-WRF outfall at 33°04'20"/ 112°01'47" to the Chin Indian Reservation</u>
SC	<u>Soldier Tank</u>	<u>32°25'34"/110°44'43"</u>
SC	<u>Sonoita Creek</u>	<u>Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"</u>
SC	<u>Sonoita Creek</u>	<u>Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River</u>
SC	<u>Split Tank</u>	<u>31°28'11"/111°05'12"</u>
SC	<u>Sutherland Wash</u>	<u>Headwaters to confluence with Cañada del Oro</u>
SC	<u>Sycamore Canyon</u>	<u>Headwaters to 32°21'60" / 110°44'48"</u>
SC	<u>Sycamore Canyon</u>	<u>From 32°21'60" / 110°44'48" to Sycamore Reservoir</u>
SC	<u>Sycamore Reservoir</u>	<u>32°20'57"/110°47'38"</u>
SC	<u>Tanque Verde Creek</u>	<u>Headwaters to Houghton Road</u>
SC	<u>Tanque Verde Creek</u>	<u>Below Houghton Road to confluence with Rillito Creek</u>

SC	<u>Three R Canyon</u>	<u>Headwaters to Unnamed Trib to Three R Canyon at 31°28'26"/110°46'04"</u>
SC	<u>Three R Canyon</u>	<u>From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)</u>
SC	<u>Three R Canyon</u>	<u>From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek</u>
SC	<u>Tinaja Wash</u>	<u>Headwaters to confluence with the Santa Cruz River</u>
SC	<u>Unnamed Trib (Endless Mine Tributary) to Harshaw Creek</u>	<u>Headwaters to Harshaw Creek @ 31°26'12.3"/110°43'27.26"</u>
SC	<u>Unnamed Trib (UA2) to Alum Gulch</u>	<u>Headwaters to Alum Gulch @ 31°28'49.67"/110°44'12.86"</u>
SC	<u>Unnamed Trib to Cox Gulch</u>	<u>Headwaters to Cox Gulch @ 31°27'53.86"/110°46'51.29"</u>
SC	<u>Unnamed Trib to Three R Canyon</u>	<u>Headwaters to Three R Canyon @ 31°28'25.82"/110°46'04.11"</u>
SC	<u>Unnamed Wash to Canada Del Oro (EDW)</u>	<u>Oracle Sanitary District WWTP outfall at 32°36'54"/ 110°48'02" to 5 km downstream</u>
SC	<u>Unnamed Wash to Canada del Oro (EDW)</u>	<u>Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro</u>
SC	<u>Unnamed Wash to Santa Cruz Wash (EDW)</u>	<u>Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash</u>
SC	<u>Vekol Wash</u>	<u>Headwater to Santa Cruz Wash: Those reaches not located on the Ak-Chin, Tohono O'odham and Gila River Indian Reservations</u>
SC	<u>Wakefield Canyon</u>	<u>Headwaters to confluence with unnamed tributary at 31°52'48"/110°26'27"</u>
SC	<u>Wakefield Canyon</u>	<u>Below confluence with unnamed tributary to confluence with Cienega Creek</u>
SC	<u>Wild Burro Canyon</u>	<u>Headwaters to confluence with unnamed tributary at 32°27'43"/111°05'47"</u>
SC	<u>Wild Burro Canyon</u>	<u>Below confluence with unnamed tributary to confluence with Santa Cruz River</u>
SP	<u>Abbot Canyon</u>	<u>Headwaters to confluence with Whitewater Draw</u>
SP	<u>Aravaipa Creek</u>	<u>Headwaters to confluence with Stowe Gulch</u>
SP	<u>Ash Creek</u>	<u>Headwaters to 31°50'28"/109°40'04"</u>
SP	<u>Babocomari River</u>	<u>Headwaters to confluence with the San Pedro River</u>
SP	<u>Bass Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 32°26'06"/110°13'22"</u>
SP	<u>Bass Canyon Tank</u>	<u>32°24'00"/110°13'00"</u>

SP	<u>Blacktail Pond</u>	<u>Fort Huachuca Military Reservation at 31°31'04"/110°24'47", headwater lake in Blacktail Canyon</u>
SP	<u>Booger Canyon</u>	<u>Headwaters to confluence with Aravaipa Creek</u>
SP	<u>Brewery Gulch</u>	<u>Headwaters to Mule Gulch @ 31°26'27.88"/109°54'48.1"</u>
SP	<u>Buck Canyon</u>	<u>Headwaters to confluence with Buck Creek Tank</u>
SP	<u>Buck Canyon</u>	<u>Below Buck Creek Tank to confluence with Dry Creek</u>
SP	<u>Buehman Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with San Pedro River</u>
SP	<u>Buehman Canyon Creek (OAW)</u>	<u>Headwaters to confluence with unnamed tributary at 32°24'54"/110°32'10"</u>
SP	<u>Bullock Canyon</u>	<u>Headwaters to confluence with Buehman Canyon</u>
SP	<u>Carr Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with the San Pedro River</u>
SP	<u>Copper Creek</u>	<u>Headwaters to confluence with Prospect Canyon</u>
SP	<u>Copper Creek</u>	<u>Below confluence with Prospect Canyon to confluence with the San Pedro River</u>
SP	<u>Curry Draw</u>	<u>Headwaters to San Pedro River</u>
SP	<u>Deer Creek</u>	<u>Headwaters to confluence with unnamed tributary at 32°59'57"/110°20'11"</u>
SP	<u>Deer Creek</u>	<u>Below confluence with unnamed tributary to confluence with Aravaipa Creek</u>
SP	<u>Dixie Canyon</u>	<u>Headwaters to confluence with Mexican Canyon</u>
SP	<u>Double R Canyon Creek</u>	<u>Headwaters to confluence with Bass Canyon</u>
SP	<u>Dry Canyon</u>	<u>Headwaters to confluence with Whitewater draw</u>
SP	<u>East Gravel Pit Pond</u>	<u>Fort Huachuca Military Reservation at 31°30'54"/ 110°19'44"</u>
SP	<u>Espiritu Canyon Creek</u>	<u>Headwaters to confluence with Soza Wash</u>
SP	<u>Fourmile Canyon Creek</u>	<u>Headwaters to confluence with Aravaipa Creek</u>
SP	<u>Fourmile Canyon, Left Prong</u>	<u>Headwaters to confluence with unnamed tributary at 32°43'15"/110°23'46"</u>
SP	<u>Fourmile Canyon, Left Prong</u>	<u>Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek</u>
SP	<u>Fourmile Canyon, Right Prong</u>	<u>Headwaters to confluence with Fourmile Canyon</u>
SP	<u>Gadwell Canyon</u>	<u>Headwaters to confluence with Whitewater Draw</u>
SP	<u>Garden Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 31°29'01"/110°19'44"</u>

SP	<u>Garden Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with the San Pedro River</u>
SP	<u>Glance Creek</u>	<u>Headwaters to confluence with Whitewater Draw</u>
SP	<u>Gravel Pit Pond</u>	<u>Fort Huachuca Military Reservation at 31°30'52"/ 110°19'49"</u>
SP	<u>Greenbush Draw</u>	<u>From U.S./Mexico border to confluence with San Pedro River</u>
SP	<u>Greenbush Draw</u>	<u>From City of Bisbee San Jose WWTP outfall at 31° 20' 35.4" , -109° 56' 10.2" to San Pedro River. The City of Bisbee San Jose WWTP outfall discharges to Greenbush Draw.</u>
SP	<u>Hidden Pond</u>	<u>Fort Huachuca Military Reservation at 32°30'30"/ 109°22'17"</u>
SP	<u>Horse Camp Canyon</u>	<u>Headwaters to confluence with Aravaipa Creek</u>
SP	<u>Hot Springs Canyon</u>	<u>Headwaters to confluence with the San Pedro River</u>
SP	<u>Johnson Canyon</u>	<u>Headwaters to Whitewater Draw at 31°32'46"/ 109°43'32"</u>
SP	<u>Leslie Creek</u>	<u>Headwaters to confluence with Whitewater Draw</u>
SP	<u>Lower Garden Canyon Pond</u>	<u>Fort Huachuca Military Reservation at 31°29'39"/ 110°18'34"</u>
SP	<u>Mexican Canyon</u>	<u>Headwaters to confluence with Dixie Canyon</u>
SP	<u>Miller Canyon</u>	<u>Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"</u>
SP	<u>Miller Canyon</u>	<u>Below Broken Arrow Ranch Road to confluence with the San Pedro River</u>
SP	<u>Montezuma Creek</u>	<u>Headwaters to Mexico Border @ 31°20'01.87"/110°13'40.97"</u>
SP	<u>Mountain View Golf Course Pond</u>	<u>Fort Huachuca Military Reservation at 31°32'14"/ 110°18'52"</u>
SP	<u>Mule Gulch</u>	<u>Headwaters to the Lavender Pit at 31°26'11"/ 109°54'02"</u>
SP	<u>Mule Gulch</u>	<u>The Lavender Pit to the' Highway 80 bridge at 31°26'30"/109°49'28"</u>
SP	<u>Mule Gulch</u>	<u>Below the Highway 80 bridge to confluence with Whitewater Draw</u>
SP	<u>Oak Grove Canyon</u>	<u>Headwaters to confluence with Turkey Creek</u>
SP	<u>Officers Club Pond</u>	<u>Fort Huachuca Military Reservation at 31°32'51"/ 110°21'37"</u>
SP	<u>Paige Canyon Creek</u>	<u>Headwaters to confluence with the San Pedro River</u>
SP	<u>Parsons Canyon</u>	<u>Headwaters to confluence with Aravaipa Creek</u>

SP	<u>Ramsey Canyon Creek</u>	<u>Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"</u>
SP	<u>Rattlesnake Creek</u>	<u>Headwaters to confluence with Brush Canyon</u>
SP	<u>Rattlesnake Creek</u>	<u>Below confluence with Brush Canyon to confluence with Aravaipa Creek</u>
SP	<u>Redfield Canyon</u>	<u>Headwaters to confluence with unnamed tributary at 32°33'40"/110°18'42"</u>
SP	<u>Redfield Canyon</u>	<u>Below confluence with unnamed tributary to confluence with the San Pedro River</u>
SP	<u>Rucker Canyon</u>	<u>Headwaters to confluence with Whitewater Draw</u>
SP	<u>Rucker Canyon Lake</u>	<u>31°46'46"/109°18'30"</u>
SP	<u>Soto Canyon</u>	<u>Headwaters to confluence with Dixie Canyon</u>
SP	<u>Swamp Springs Canyon Creek</u>	<u>Headwaters to confluence with Redfield Canyon</u>
SP	<u>Sycamore Pond I</u>	<u>Fort Huachuca Military Reservation at 31°35'12"/ 110°26'11"</u>
SP	<u>Sycamore Pond II</u>	<u>Fort Huachuca Military Reservation at 31°34'39"/ 110°26'10"</u>
SP	<u>Turkey Creek</u>	<u>Headwaters to confluence with Aravaipa Creek</u>
SP	<u>Unnamed Wash Mt. Lemmon (EDW)</u>	<u>Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream</u>
SP	<u>Virgus Canyon</u>	<u>Headwaters to confluence with Aravaipa Creek</u>
SP	<u>Walnut Gulch</u>	<u>Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"</u>
SP	<u>Walnut Gulch</u>	<u>Tombstone Wash to confluence with San Pedro River</u>
SP	<u>Walnut Gulch (EDW)</u>	<u>Tombstone WWTP outfall to the confluence with Tombstone Wash</u>
SP	<u>Woodcutters Pond</u>	<u>Fort Huachuca Military Reservation at 31°30'09"/ 110°20'12"</u>
SR	<u>Barnhard Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°05'37"/111°26'40"</u>
SR	<u>Barnhardt Creek</u>	<u>Below confluence with unnamed tributary to confluence with Rye Creek</u>
SR	<u>Basin Lake</u>	<u>33°55'00"/109°26'09"</u>
SR	<u>Bear Creek</u>	<u>Headwaters to confluence with the Black River</u>
SR	<u>Bear Wallow Creek, North Fork (OAW)</u>	<u>Headwaters to confluence with the Bear Wallow Creek</u>
SR	<u>Bear Wallow Creek, South Fork (OAW)</u>	<u>Headwaters to confluence with the Bear Wallow Creek</u>

<u>SR</u>	<u>Big Lake</u>	<u>33°52'36"/109°25'33"</u>
<u>SR</u>	<u>Bloody Tanks Wash</u>	<u>Headwaters to Schultze Ranch Road</u>
<u>SR</u>	<u>Bloody Tanks Wash</u>	<u>Schultze Ranch Road to confluence with Miami Wash</u>
<u>SR</u>	<u>Boulder Creek</u>	<u>Headwaters to confluence with LaBarge Creek</u>
<u>SR</u>	<u>Campaign Creek</u>	<u>Headwaters to Roosevelt Lake</u>
<u>SR</u>	<u>Canyon Creek</u>	<u>Headwaters to the White Mountain Apache Reservation boundary</u>
<u>SR</u>	<u>Centerfire Creek</u>	<u>Headwaters to confluence with the Black River</u>
<u>SR</u>	<u>Chambers Draw Creek</u>	<u>Headwaters to confluence with the North Fork of the East Fork of Black River</u>
<u>SR</u>	<u>Cherry Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"</u>
<u>SR</u>	<u>Christopher Creek</u>	<u>Headwaters to confluence with Tonto Creek</u>
<u>SR</u>	<u>Cold Spring Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 33°49'50"/110°52'58"</u>
<u>SR</u>	<u>Cold Spring Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with Cherry Creek</u>
<u>SR</u>	<u>Coon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 33°46'41"/110°54'26"</u>
<u>SR</u>	<u>Coon Creek</u>	<u>Below confluence with unnamed tributary to confluence with Salt River</u>
<u>SR</u>	<u>Coyote Creek</u>	<u>Headwaters to confluence with the Black River, East Fork</u>
<u>SR</u>	<u>Deer Creek (D2E)</u>	<u>Headwaters to confluence with the Black River, East Fork</u>
<u>SR</u>	<u>Del Shay Creek</u>	<u>Headwaters to confluence with Gun Creek</u>
<u>SR</u>	<u>Devils Chasm Creek</u>	<u>Headwaters to confluence with unnamed tributary at 33°48'46" /110°52'35"</u>
<u>SR</u>	<u>Dipping Vat Reservoir</u>	<u>33°55'47"/109°25'31"</u>
<u>SR</u>	<u>Double Cienega Creek</u>	<u>Headwaters to confluence with Fish Creek</u>
<u>SR</u>	<u>Fish Creek</u>	<u>Headwaters to confluence with the Salt River</u>
<u>SR</u>	<u>Five Point Mountain Tributary</u>	<u>Headwaters to Pinto Creek @ 33°22'25.93"/110°58'14"</u>
<u>SR</u>	<u>Gibson Mine Tributary</u>	<u>Headwaters to Pinto Creek @ 33°20'48.99"/110°56'42.31"</u>
<u>SR</u>	<u>Gold Creek</u>	<u>Headwaters to confluence with unnamed tributary at 33°59'47"/111°25'10"</u>

SR	<u>Gold Creek</u>	<u>Below confluence with unnamed tributary to confluence with Tonto Creek</u>
SR	<u>Gordon Canyon Creek</u>	<u>Headwaters to confluence with Hog Canyon</u>
SR	<u>Gordon Canyon Creek</u>	<u>Below confluence with Hog Canyon to confluence with Haigler Creek</u>
SR	<u>Greenback Creek</u>	<u>Headwaters to confluence with Tonto Creek</u>
SR	<u>Home Creek</u>	<u>Headwaters to confluence with the Black River, West Fork</u>
SR	<u>Horse Camp Creek</u>	<u>Headwaters to confluence with unnamed tributary at 33°54'00"/110°50'07"</u>
SR	<u>Horse Camp Creek</u>	<u>Below confluence with unnamed tributary to confluence with Cherry Creek</u>
SR	<u>Houston Creek</u>	<u>Headwaters to confluence with Tonto Creek</u>
SR	<u>Hunter Creek</u>	<u>Headwaters to confluence with Christopher Creek</u>
SR	<u>LaBarge Creek</u>	<u>Headwaters to Canyon Lake</u>
SR	<u>Lake Sierra Blanca</u>	<u>33°52'25"/109°16'05"</u>
SR	<u>Miami Wash</u>	<u>Headwaters to confluence with Pinal Creek</u>
SR	<u>Mule Creek</u>	<u>Headwaters to confluence with Canyon Creek</u>
SR	<u>Open Draw Creek</u>	<u>Headwaters to confluence with the East Fork of Black River</u>
SR	<u>P B Creek</u>	<u>Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"</u>
SR	<u>Pinal Creek</u>	<u>Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"</u>
SR	<u>Pinal Creek</u>	<u>From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/ 110°51'55"</u>
SR	<u>Pinal Creek</u>	<u>From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"</u>
SR	<u>Pinal Creek (EDW)</u>	<u>Confluence with unnamed EDW wash (Globe WWTP) to 33°25'29"/110°48'20"</u>
SR	<u>Pine Creek</u>	<u>Headwaters to confluence with the Salt River</u>
SR	<u>Pinto Creek</u>	<u>Below confluence with unnamed tributary to Roosevelt Lake</u>
SR	<u>Pole Corral Lake</u>	<u>33°30'38"/110°00'15"</u>
SR	<u>Pueblo Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 33°50'23"/110°51'37"</u>
SR	<u>Pueblo Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with Cherry Creek</u>

<u>SR</u>	<u>Reevis Creek</u>	<u>Headwaters to confluence with Pine Creek</u>
<u>SR</u>	<u>Reservation Creek</u>	<u>Headwaters to confluence with the Black River</u>
<u>SR</u>	<u>Reynolds Creek</u>	<u>Headwaters to confluence with Workman Creek</u>
<u>SR</u>	<u>Russell Gulch</u>	<u>From Headwaters to confluence with Miami Wash</u>
<u>SR</u>	<u>Salome Creek</u>	<u>Headwaters to confluence with the Salt River</u>
<u>SR</u>	<u>Salt House Lake</u>	<u>33°57'04"/109°20'11"</u>
<u>SR</u>	<u>Slate Creek</u>	<u>Headwaters to confluence with Tonto Creek</u>
<u>SR</u>	<u>Snake Creek (OAW)</u>	<u>Headwaters to confluence with the Black River</u>
<u>SR</u>	<u>Spring Creek</u>	<u>Headwaters to confluence with Tonto Creek</u>
<u>SR</u>	<u>Stinky Creek (OAW)</u>	<u>Headwaters to confluence with the Black River, West Fork</u>
<u>SR</u>	<u>Thomas Creek</u>	<u>Headwaters to confluence with Beaver Creek</u>
<u>SR</u>	<u>Thompson Creek</u>	<u>Headwaters to confluence with the West Fork of the Black River</u>
<u>SR</u>	<u>Turkey Creek</u>	<u>Headwaters to confluence with Rock Creek</u>
<u>SR</u>	<u>Unnamed trib to Black River North Fork East Fork</u>	<u>Headwaters to Black River NF of EF</u>
<u>SR</u>	<u>Wildcat Creek</u>	<u>Headwaters to confluence with Centerfire Creek</u>
<u>SR</u>	<u>Workman Creek</u>	<u>Below confluence with Reynolds Creek to confluence with Salome Creek</u>
<u>UG</u>	<u>Ash Creek</u>	<u>Headwaters to confluence with unnamed tributary at 32°46'15"/109°51'45"</u>
<u>UG</u>	<u>Ash Creek</u>	<u>Below confluence with unnamed tributary to confluence with the Gila River</u>
<u>UG</u>	<u>Bennett Wash</u>	<u>Headwaters to the Gila River</u>
<u>UG</u>	<u>Buckelew Creek</u>	<u>Headwaters to confluence with Castle Creek</u>
<u>UG</u>	<u>Castle Creek</u>	<u>Headwaters to confluence with Campbell Blue Creek</u>
<u>UG</u>	<u>Cave Creek</u>	<u>Below Coronado National Forest boundary to New Mexico border</u>
<u>UG</u>	<u>Chase Creek</u>	<u>Headwaters to the Phelps-Dodge Morenci Mine</u>
<u>UG</u>	<u>Chase Creek</u>	<u>Below the Phelps-Dodge Morenci Mine to confluence with San Francisco River</u>
<u>UG</u>	<u>Chitty Canyon Creek</u>	<u>Headwaters to confluence with Salt House Creek</u>
<u>UG</u>	<u>Cima Creek</u>	<u>Headwaters to confluence with Cave Creek</u>
<u>UG</u>	<u>Cluff Reservoir #1</u>	<u>32°48'55"/109°50'46"</u>
<u>UG</u>	<u>Cluff Reservoir #3</u>	<u>32°48'21"/109°51'46"</u>
<u>UG</u>	<u>Coleman Creek</u>	<u>Headwaters to confluence with Campbell Blue Creek</u>

UG	<u>Dankworth Lake</u>	<u>32°43'13"/109°42'17"</u>
UG	<u>Deadman Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with Graveyard Wash</u>
UG	<u>Eagle Creek</u>	<u>Headwaters to confluence with unnamed tributary at 33°22'32"/109°29'43"</u>
UG	<u>East Eagle Creek</u>	<u>Headwaters to confluence with Eagle Creek</u>
UG	<u>East Turkey Creek</u>	<u>Headwaters to confluence with unnamed tributary at 31°58'22"/109°12'20"</u>
UG	<u>East Turkey Creek</u>	<u>Below confluence with unnamed tributary to terminus near San Simon River</u>
UG	<u>East Whitetail</u>	<u>Headwaters to terminus near San Simon River</u>
UG	<u>Emigrant Canyon</u>	<u>Headwaters to terminus near San Simon River</u>
UG	<u>Evans Pond #1</u>	<u>32°49'19"/109°51'12"</u>
UG	<u>Evans Pond #2</u>	<u>32°49'14"/109°51'09"</u>
UG	<u>Fishhook Creek</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>Foote Creek</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>Frye Canyon Creek</u>	<u>Headwaters to Frye Mesa Reservoir</u>
UG	<u>Frye Canyon Creek</u>	<u>Frye Mesa reservoir to terminus at Highline Canal.</u>
UG	<u>Frye Mesa Reservoir</u>	<u>32°45'14"/109°50'02"</u>
UG	<u>Georges Tank</u>	<u>33°51'24"/109°08'30"</u>
UG	<u>Gibson Creek</u>	<u>Headwaters to confluence with Marijilda Creek</u>
UG	<u>Lanphier Canyon</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>Little Blue Creek</u>	<u>Headwaters to confluence with Dutch Blue Creek</u>
UG	<u>Little Creek</u>	<u>Headwaters to confluence with the San Francisco River</u>
UG	<u>Marijilda Creek</u>	<u>Headwaters to confluence with Gibson Creek</u>
UG	<u>Marijilda Creek</u>	<u>Below confluence with Gibson Creek to confluence with Stockton Wash</u>
UG	<u>Markham Creek</u>	<u>Headwaters to confluence with the Gila River</u>
UG	<u>Pigeon Creek</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>Roper Lake</u>	<u>32°45'23"/109°42'14"</u>
UG	<u>Sheep Tank</u>	<u>32°46'14"/109°48'09"</u>
UG	<u>Smith Pond</u>	<u>32°49'15"/109°50'36"</u>
UG	<u>Squaw Creek</u>	<u>Headwaters to confluence with Thomas Creek</u>
UG	<u>Stone Creek</u>	<u>Headwaters to confluence with the San Francisco River</u>

UG	<u>Strayhorse Creek</u>	<u>Headwaters to confluence with the Blue River</u>
UG	<u>Thomas Creek</u>	<u>Headwaters to confluence with Rousensock Creek</u>
UG	<u>Tinny Pond</u>	<u>33°47'49"/109°04'27"</u>
VR	<u>American Gulch</u>	<u>Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"</u>
VR	<u>American Gulch (EDW)</u>	<u>Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River</u>
VR	<u>Apache Creek</u>	<u>Headwaters to confluence with Walnut Creek</u>
VR	<u>Ashbrook Wash</u>	<u>Headwaters to the Fort McDowell Indian Reservation boundary</u>
VR	<u>Aspen Creek</u>	<u>Headwaters to confluence with Granite Creek</u>
VR	<u>Banning Creek</u>	<u>Headwaters to Granite Creek @ 34°31'01.02"/112°28'37.63"</u>
VR	<u>Bar Cross Tank</u>	<u>35°00'41"/112°05'39"</u>
VR	<u>Barrata Tank</u>	<u>35°02'43"/112°24'21"</u>
VR	<u>Big Chino Wash</u>	<u>Headwaters to confluence with Sullivan Lake</u>
VR	<u>Bitter Creek</u>	<u>Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"</u>
VR	<u>Bitter Creek (EDW)</u>	<u>Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary</u>
VR	<u>Black Canyon Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°39'20"/112°05'06"</u>
VR	<u>Black Canyon Creek</u>	<u>Below confluence with unnamed tributary to confluence with the Verde River</u>
VR	<u>Bonita Creek</u>	<u>Headwaters to confluence with Ellison Creek</u>
VR	<u>Bray Creek</u>	<u>Headwaters to confluence with Webber Creek</u>
VR	<u>Butte Creek</u>	<u>Headwaters to Miller Creek @ 34°32'49.03"/112°28'29.3"</u>
VR	<u>Camp Creek</u>	<u>Headwaters to confluence with Verde River</u>
VR	<u>Cereus Wash</u>	<u>Headwaters to the Fort McDowell Indian Reservation boundary</u>
VR	<u>Chase Creek</u>	<u>Headwaters to confluence with the East Verde River</u>
VR	<u>Clover Creek</u>	<u>Headwaters to confluence with Headwaters of West Clear Creek</u>
VR	<u>Coffee Creek</u>	<u>Headwaters to confluence with Spring Creek</u>
VR	<u>Colony Wash</u>	<u>Headwaters to the Fort McDowell Indian Reservation boundary</u>

<u>VR</u>	<u>Deadman Creek</u>	<u>Headwaters to Horseshoe Reservoir</u>
<u>VR</u>	<u>Del Monte Gulch</u>	<u>Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"</u>
<u>VR</u>	<u>Del Monte Gulch (EDW)</u>	<u>City of Cottonwood WWTP outfall 002 at 34°43'57"/ 112°02'46" to confluence with Verde River</u>
<u>VR</u>	<u>Del Rio Dam Lake</u>	<u>34°48'55"/112°28'03"</u>
<u>VR</u>	<u>Dry Beaver Creek</u>	<u>Headwaters to confluence with Beaver Creek</u>
<u>VR</u>	<u>Dry Creek (EDW)</u>	<u>Sedona Ventures WWTP outfall at 34°50'42"/ 111°52'26" to 34°50'02"/ 111°52'17"</u>
<u>VR</u>	<u>Dude Creek</u>	<u>Headwaters to confluence with the East Verde River</u>
<u>VR</u>	<u>Ellison Creek</u>	<u>Headwaters to confluence with the East Verde River</u>
<u>VR</u>	<u>Foxboro Lake</u>	<u>34°53'42"/111°39'55"</u>
<u>VR</u>	<u>Fry Lake</u>	<u>35°03'45"/111°48'04"</u>
<u>VR</u>	<u>Gap Creek</u>	<u>Headwaters to confluence with Government Spring</u>
<u>VR</u>	<u>Gap Creek</u>	<u>Below Government Spring to confluence with the Verde River</u>
<u>VR</u>	<u>Garrett Tank</u>	<u>35°18'57"/112°42'20"</u>
<u>VR</u>	<u>Goldwater Lake, Lower</u>	<u>34°29'56"/112°27'17"</u>
<u>VR</u>	<u>Goldwater Lake, Upper</u>	<u>34°29'52"/112°26'59"</u>
<u>VR</u>	<u>Government Canyon</u>	<u>Headwaters to Granite Creek @ 34°33'29.49"/112°26'53.18"</u>
<u>VR</u>	<u>Granite Basin Lake</u>	<u>34°37'01"/112°32'58"</u>
<u>VR</u>	<u>Granite Creek</u>	<u>Headwaters to Watson Lake</u>
<u>VR</u>	<u>Granite Creek</u>	<u>Below Watson Lake to confluence with the Verde River</u>
<u>VR</u>	<u>Green Valley Lake (EDW)</u>	<u>34°13'54"/111°20'45"</u>
<u>VR</u>	<u>Heifer Tank</u>	<u>35°20'27"/112°32'59"</u>
<u>VR</u>	<u>Hells Canyon Tank</u>	<u>35°04'59"/112°24'07"</u>
<u>VR</u>	<u>Homestead Tank</u>	<u>35°21'24"/112°41'36"</u>
<u>VR</u>	<u>Horse Park Tank</u>	<u>34°58'15"/111°36'32"</u>
<u>VR</u>	<u>Houston Creek</u>	<u>Headwaters to confluence with the Verde River</u>
<u>VR</u>	<u>Huffer Tank</u>	<u>34°27'46"/111°23'11"</u>
<u>VR</u>	<u>J.D. Dam Lake</u>	<u>35°04'02"/112°01'48"</u>
<u>VR</u>	<u>Jacks Canyon</u>	<u>Headwaters to Big Park WWTP outfall at 34°45'46"/ 111°45'51"</u>

VR	<u>Jacks Canyon (EDW)</u>	<u>Below Big Park WWTP outfall to confluence with Dry Beaver Creek</u>
VR	<u>Lime Creek</u>	<u>Headwaters to Horseshoe Reservoir</u>
VR	<u>Mail Creek</u>	<u>Headwaters to East Verde River @ 34°25'03.88"/111°15'49.6"</u>
VR	<u>Manzanita Creek</u>	<u>Headwaters to Granite Creek @ 34°31'31.19"/112°28'44.34"</u>
VR	<u>Masonry Number 2 Reservoir</u>	<u>35°13'32"/112°24'10"</u>
VR	<u>McLellan Reservoir</u>	<u>35°13'09"/112°17'06"</u>
VR	<u>Meath Dam Tank</u>	<u>35°07'52"/112°27'35"</u>
VR	<u>Miller Creek</u>	<u>Headwaters to Granite Creek @ 34°32'48.55"/112°28'12.96"</u>
VR	<u>Mullican Place Tank</u>	<u>34°44'16"/111°36'10"</u>
VR	<u>Munds Creek (EDW), Tributary to Oak Creek</u>	<u>From Pinewood Sanitary District Kay S. Blackman WWTP outfall at 34° 56' 09" , -111° 38' 35" to Oak Creek.</u>
VR	<u>North Fork Miller</u>	<u>Headwaters to Miller Creek</u>
VR	<u>North Granite Creek</u>	<u>Headwaters to Granite Creek @ 34°33'04.33"/112°27'50.45"</u>
VR	<u>Oak Creek, West Fork (OAW)</u>	<u>Headwaters to confluence with Oak Creek</u>
VR	<u>Odell Lake</u>	<u>34°56'5"/111°37'53"</u>
VR	<u>Peck's Lake</u>	<u>34°46'51"/112°02'01"</u>
VR	<u>Perkins Tank</u>	<u>35°06'42"/112°04'12"</u>
VR	<u>Pine Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°21'51"/111°26'49"</u>
VR	<u>Pine Creek</u>	<u>Below confluence with unnamed tributary to confluence with East Verde River</u>
VR	<u>Red Creek</u>	<u>Headwaters to confluence with the Verde River</u>
VR	<u>Reservoir #1</u>	<u>35°13'5"/111°50'09"</u>
VR	<u>Reservoir #2</u>	<u>35°13'17"/111°50'39"</u>
VR	<u>Roundtree Canyon Creek</u>	<u>Headwaters to confluence with Tangle Creek</u>
VR	<u>Scholze Lake</u>	<u>35°11'53"/112°00'37"</u>
VR	<u>Slaughterhouse Gulch</u>	<u>Headwaters to Yavapai Res. Boundary</u>
VR	<u>Spring Creek</u>	<u>Headwaters to confluence with unnamed tributary at 34°57'23"/111°57'21"</u>
VR	<u>Steel Dam Lake</u>	<u>35°13'36"/112°24'54"</u>
VR	<u>Stehr Lake</u>	<u>34°22'01"/111°40'02"</u>

VR	<u>Stoneman Lake</u>	<u>34°46'47"/111°31'14"</u>
VR	<u>Sycamore Creek</u>	<u>Below confluence with unnamed tributary to confluence with Verde River</u>
VR	<u>Sycamore Creek</u>	<u>Headwaters to confluence with Verde River at 34°04'42"/111°42'14"</u>
VR	<u>Tangle Creek</u>	<u>Headwaters to confluence with Verde River</u>
VR	<u>Trinity Tank</u>	<u>35°27'44"/112°48'01"</u>
VR	<u>Unnamed Trib to Granite Creek (UGC)</u>	<u>Headwaters to Yavapai Prescott Reservation Boundary</u>
VR	<u>Unnamed Trib to UGC (UUG)</u>	<u>Headwaters to Unnamed Trib to Granite Creek (UGC)</u>
VR	<u>Unnamed Wash</u>	<u>Flagstaff Meadows WWTP outfall at 35°13'53.54"/ 111°48'40.32"to Volunteer Wash</u>
VR	<u>Walnut Creek</u>	<u>Headwaters to confluence with Big Chino Wash</u>
VR	<u>Watson Lake</u>	<u>34°34'58"/112°25'26"</u>
VR	<u>Webber Creek</u>	<u>Headwaters to confluence with the East Verde River</u>
VR	<u>Wet Beaver Creek</u>	<u>Headwaters to unnamed springs at 34°41'17"/ 111°34'34"</u>
VR	<u>Whitehorse Lake</u>	<u>35°06'59"/112°00'48"</u>
VR	<u>Williamson Valley Wash</u>	<u>Headwaters to confluence with Mint Wash</u>
VR	<u>Williamson Valley Wash</u>	<u>From confluence of Mint Wash to 10.5 km downstream</u>
VR	<u>Williamson Valley Wash</u>	<u>From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash</u>
VR	<u>Williscraft Tank</u>	<u>35°11'22"/112°35'40"</u>
VR	<u>Willow Creek</u>	<u>Above Willow Creek Reservoir</u>
VR	<u>Willow Valley Lake</u>	<u>34°41'08"/111°20'02"</u>

**R18-2-217. Best Management Practices for non-WOTUS Protected Surface Waters**

**A.** The BMPs described in this rule are intended to ensure that activities within the ordinary high-water mark of perennial or intermittent non-WOTUS protected surface waters, or within the bed and bank of other waters that materially impact (i.e., are within ¼ mile upstream of) non-WOTUS protected surface waters, do not violate applicable surface water quality standards in the non-WOTUS protected surface waters. For purposes of this section, the activities described in the prior sentence will be referred to as “regulated activities.” Depending on the regulated activities conducted, not all of the BMPs described below may be applicable to a particular project. The owner or operator is responsible to consider the BMPs outlined below and to implement those necessary to ensure that the regulated activities will not violate applicable surface water quality standards in the non-WOTUS protected surface water.

**B.** The BMPs described below are not applicable to any activities that are addressed under an individual or general AZPDES permit that are otherwise regulated under A.R.S. Title 49.

**C.** Erosion and sedimentation control BMPs:

1. When flow is present in any non-WOTUS protected surface waters within a project area, flow shall not be altered except to prevent erosion or pollution of any non-WOTUS protected surface waters.
2. Any disturbance within the ordinary high-water mark of non-WOTUS protected surface waters or within the bed and banks of other waters, that is not intended to be permanently altered, shall be stabilized as soon as practicable to prevent erosion and sedimentation.
3. When flow in any non-WOTUS protected surface water is sufficient to erode, carry, or deposit material, regulated activities shall cease until:
  - a. The flow decreases below the point where sediment movement ceases; or
  - b. Control measures have been undertaken, i.e., equipment and material easily transported by flow are protected within non-erodible barriers or moved outside the flow area.
4. Silt laden or turbid water resulting from regulated activities should be managed in a manner to reduce sediment load prior to discharging.
5. No washing or dewatering of fill material should occur within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters. Other than the replacement of native fill or material used to support vegetation rooting or growth, fill placed within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water must resist washout whether such resistance is derived via particle size limits, presence of a binder, vegetation, or other armoring.

**D.** Pollutant management BMPs:

1. If regulated activities are likely to violate applicable surface water quality standards in a perennial or intermittent non-WOTUS protected surface water, operations shall cease until the problem is resolved or until control measures have been implemented.
2. Construction material and/or fill (other than native fill or that necessary to support revegetation) placed within surface waters as a result of regulated activities shall not include pollutants in concentrations that will violate applicable surface water quality standards in a perennial or intermittent non-WOTUS protected surface water.

**E.** Construction phase BMPs:

1. Equipment staging and storage areas or fuel, oil, and other petroleum products storage and solid waste containment should not be located within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water.
2. Any equipment maintenance, washing, or fueling shall not be done within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters with the following exception:

- a. Equipment too large or unwieldy to be readily moved, such as large cranes, may be fueled and serviced in non-WOTUS protected surface waters (but outside of standing or flowing water) provided material specifically manufactured and sold as spill containment is in place during fueling/servicing.
  3. All equipment shall be inspected for leaks, all leaks shall be repaired, and all repaired equipment shall be cleaned to remove any fuel or other fluid residue prior to use within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters.
  4. Washout of concrete handling equipment shall not take place within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters.
- F.** Post-construction BMPs:
1. Upon completion of regulated activities, areas within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface waters shall be promptly cleared of all forms, piling, construction residues, equipment, debris, or other obstructions.
  2. If fully, partially, or occasionally submerged structures are constructed of cast-in-place concrete instead of pre-cast concrete, steps will be taken using sheet piling or temporary dams to prevent contact between water (instream and runoff) and the concrete until it cures and until any curing agents have evaporated or are no longer a pollutant threat.
  3. Any permanent water crossings within the ordinary high-water mark of any perennial or intermittent in a non-WOTUS protected surface water (other than fords) shall not be equipped with gutters, drains, scuppers, or other conveyances that allow untreated runoff (due to events equal to or lesser in magnitude than the design event for the crossing structure) to directly enter a non-WOTUS protected surface water if such runoff can be directed to a local stormwater drainage, containment, and/or treatment system.
  4. Debris shall be cleared as needed from culverts, ditches, dips, and other drainage structures within the ordinary high-water mark of any perennial or intermittent non-WOTUS protected surface water to prevent clogging or conditions that may lead to a washout.
  5. Temporary structures constructed or imported materials shall be removed no later than upon completion of the regulated activities.
  6. Temporary structures constructed of native materials, if they provide an obstacle to flow or can contribute to or cause erosion, or cause changes in sediment load, shall be removed no later than upon completion of the regulated activities.
- G.** Design consideration BMPs:
1. All temporary structures constructed of imported materials and all permanent structures, including but not limited to, access roadways, culvert crossings, staging areas, material stockpiles, berms, dikes, and pads, shall be constructed so as to accommodate overtopping and resist washout by streamflow.
  2. Any temporary crossing, other than fords on native material, shall be constructed in such a manner so as to provide armoring of the stream channel. Materials used to provide this armoring shall not include anything easily transportable by flow. Examples of acceptable materials include steel plates, untreated wooden planks, pre-cast concrete planks or

blocks. Examples of unacceptable materials include clay, silt, sand, and gravel finer than cobble (roughly fist-sized). The armoring shall, via mass, anchoring systems, or a combination of the two, resist washout.

**H.** Notification.

1. The owner or operator of any regulated activities shall, five (5) days prior to initiation of the regulated activities, submit a notice to ADEQ on a form that includes basic information including the GPS location, the waterbody ID of the nearest non-WOTUS protected surface water, general description of planned activities, types of BMPs to be employed during the project, and phone number and email for a contact person. Work may proceed after five (5) calendar days have passed since the owner/operator provided notification to ADEQ unless ADEQ responds in writing to the contact person for the owner/operator.

**I.** Exclusions:

1. The BMPS and notification requirements in this section shall not apply to:
  - a. Activities that are already regulated under A.R.S. Title 49.
  - b. Discharges to a non-WOTUS protected surface water incidental to a recharge project.
  - c. Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
  - d. Maintenance but not construction of drainage ditches.
  - e. Construction and maintenance of irrigation ditches.
  - f. Maintenance of structures as dams, dikes, and levees.

**§ R18-11-101. Definitions**

The following terms apply to this Article:

1. "Acute toxicity" means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. "Agricultural irrigation (AgI)" means the use of a surface water for crop irrigation.
3. "Agricultural livestock watering (AgL)" means the use of a surface water as a water supply for consumption by livestock.
4. "Annual mean" is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. "Aquatic and wildlife (cold water) (A&Wc)" means the use of a surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. "Aquatic and wildlife (effluent-dependent water) (A&Wedw)" means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. "Aquatic and wildlife (ephemeral) (A&We)" means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. "Aquatic and wildlife (warm water) (A&Ww)" means the use of a surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. "Arizona Pollutant Discharge Elimination System (AZPDES)" means the point source discharge permitting program established under 18 A.A.C. 9, Article 9.
10. "Assimilative capacity" means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.

11. "Clean Water Act" means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. "Complete Mixing" means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
13. "Criteria" means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
14. "Critical flow conditions of the discharge" means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone's receiving water as follows:
- a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
  - b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
  - c. For human health based water quality standard criteria, the discharge flow critical condition is the long-term arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
15. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
- a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
  - b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
  - c. For human health based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
16. "Deep lake" means a lake or reservoir with an average depth of more than 6 meters.

17. "Designated use" means a use specified in Appendix B of this Article for a surface water.
18. "Domestic water source (DWS)" means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
19. "Effluent-dependent water (EDW)" means a surface water, classified under R18-11-113 that consists of a point source discharge of wastewater. An effluent-dependent water is a surface water that, without the point source discharge of wastewater, would be an ephemeral water.
20. "Ephemeral water" means a surface water that has a channel that is at all times above the water table and flows only in direct response to precipitation.
21. "Existing use" means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.
22. "Fish consumption (FC)" means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
23. "Full-body contact (FBC)" means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
24. "Geometric mean" means the  $n$ th root of the product of  $n$  items or values. The geometric mean is calculated using the following formula:
25. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate ( $\text{CaCO}_3$ ) in milligrams per liter.
26. "Igneous lake" means a lake located in volcanic, basaltic, or granite geology and soils.
27. "Intermittent water" means a stream or reach that flows continuously only at certain times of the year, as when it receives water from a spring or from another surface source, such as melting snow.

28. "Mixing zone" means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
29. "Oil" means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
30. "Outstanding Arizona water (OAW)" means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
31. "Partial-body contact (PBC)" means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
32. "Perennial water" means a surface water that flows continuously throughout the year.
33. *"Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. A.R.S §49-201(29)*
34. "Pollutant Minimization Program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.
35. "Practical quantitation limit" means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
36. "Reference condition" means a set of abiotic physical stream habitat, water quality, and site selection criteria established by the Director that describe the typical characteristics of stream sites in a region that are least disturbed by environmental stressors. Reference biological assemblages of macro invertebrates and algae are collected from these reference condition streams for calculating the Arizona Indexes of Biological Integrity thresholds.

37. "Regional Administrator" means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
38. "Regulated discharge" means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.
39. "Riffle habitat" means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.
40. "Run habitat" means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
41. "Sedimentary lake" means a lake or reservoir in sedimentary or karst geology and soils.
42. "Shallow lake" means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
43. "Significant degradation" means:
- a. The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
  - b. Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
44. "Surface water" means
- "Navigable waters" as defined in A.R.S. §49-201(22).
45. "Total nitrogen" means the sum of the concentrations of ammonia (NH<sub>3</sub>), ammonium ion (NH<sub>4</sub><sup>+</sup>), nitrite (NO<sub>2</sub>), and nitrate (NO<sub>3</sub>), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
46. "Total phosphorus" means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
47. "Toxic" means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion

through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.

48. "Urban lake" means a manmade lake within an urban landscape.

49. "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.

50. "Variance" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the variance.

51. "Wadeable" means a surface water can be safely crossed on foot and sampled without a boat.

52. "Wastewater" does not mean:

a. Stormwater,

b. Discharges authorized under the De Minimus General Permit,

c. Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or

d. Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.

53. "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.

54. "Zone of initial dilution" means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

**History:**

Former Section R9-21-101 repealed, new Section R9-21-101 adopted effective January 29, 1980 (Supp. 80-1). Amended effective April 17, 1984 (Supp. 84-2). Amended effective January 7, 1985 (Supp. 85-1). Amended by

**Ariz. Admin. Code R18-11-101 Definitions (Arizona  
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adding subsection (C) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-101 renumbered without change as Section R18-11-101 (Supp. 87-3). Former Section R18-11-101 repealed, new Section R18-11-101 adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Deleted first definition to R18-11-101(32) "Navigable Water", previously printed in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective 9/10/2019.

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona  
Administrative Code (2022 Edition))**

**TABLE 1. Water Quality Criteria By Designated Use (see f)**

<b>Parameter</b>	<b>CAS NUMBER</b>	<b>DWS (µg/L)</b>	<b>FC (µg/L)</b>	<b>FBC (µg/L)</b>	<b>PBC (µg/L)</b>
Acenaphthene	83329	420	198	56,000	56,000
Acenaphthylene	208968	420		56,000	56,000
Acrolein	107028	3.5	1.9	467	467
Acrylonitrile	107131	0.006	0.2	9	37,333
Alachlor	15972608	2		9,333	9,333
Aldrin	309002	0.002	0.00005	0.27	28
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)			
Ammonia	7664417				
Anthracene	120127	2,100	74	280,000	280,000
Antimony	7440360	6 T	640 T	747 T	747 T
Arsenic	7440382	10 T	80 T	30 T	280 T
Asbestos	1332214	See (a)			
Atrazine	1912249	3		32,667	32,667
Barium	7440393	2,000 T		186,667 T	186,667 T

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona Administrative Code (2022 Edition))**

Benz(a)anthracene	56553	0.005	0.02	47	280
Benzene	71432	5	114	133	3,733
Benzo[b]fluoranthene Benzfluoranthene	205992	0.005	0.02	47	280
Benzidine	92875	0.0002	0.0002	0.02	2,800
Benzo(a)pyrene	50328	0.2	0.1	47	280
Benzo(k)fluoranthene	207089	0.005	0.02	47	280
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T
Beta particles and photon emitters		4 millirems / year See (i)			
Bis(2-chloroethoxy) methane	111911	21		2,800	2,800
Bis(2-chloroethyl) ether	111444	0.03	0.5	4	4
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333
Bis(chloromethyl) ether	542881	0.00015		0.02	
Boron	7440428	1,400 T		186,667 T	186,667 T
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667
to 4-Bromophenyl phenyl ether	101553				
Bromoform	75252	TTHM See (g)	133	591	18,667

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona  
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Bromomethane	74839	9.8	299	1,307	1,307
Butyl benzyl phthalate	85687	1,400	386	186,667	186,667
Cadmium	7440439	5 T	6 T	467 T	467 T
Carbaryl	63252				
Carbofuran	1563662	40		4,667	4,667
Carbon tetrachloride	56235	5	3	67	3,733
Chlordane	57749	2	0.0008	13	467
Chlorine (total residual)	7782505	4,000		93,333	93,333
Chlorobenzene	108907	100	1,553	18,667	18,667
Chloroethane	75003	280		93,333	93,333
2-Chloroethyl vinyl ether	110758				
Chloroform	67663	TTHM See (g)	2,133	9,333	9,333
p-Chloro-m-cresol	59507				
Chloromethane	74873				
beta-Chloronaphthalene	91587	2240	1267	298,667	298,667
2-Chlorophenol	95578	35	30	4,667	4,667
Chloropyrifos	2921882	21	1.0	2,800	2,800
Chromium III	16065831	10,500	75,000 T	1,400,000 T	1,400,000 T

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona Administrative Code (2022 Edition))**

Chromium VI	18540299	21 T	150 T	2,800 T	2,800 T
Chromium (Total)	7440473	100 T			
Chrysene	218019	0.005	0.02	0.6	0.6
Copper	7440508	1,300 T		1,300 T	1,300 T
Cyanide (as free cyanide)	57125	200 T	504 T	588 T	588 T
Dalapon	75990	200	8,000	28,000	28,000
DDT and its breakdown products	50293	0.1	0.0003	14	467
Demeton	8065483				
Diazinon	333415				
Dibenz (ah) anthracene	53703	0.350	0.02	47.0	280.0
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18,667
1,2-Dibromo-3-chloropropane	96128	0.2		2,800	2,800
1,2-Dibromoethane	106934	0.02		2	8,400
Dibutyl phthalate	84742	700	899	93,333	93,333
1,2-Dichlorobenzene	95501	600	205	84,000	84,000
1,3-Dichlorobenzene	541731				
1,4-Dichlorobenzene	106467	75	5755	373,333	373,333
3,3'-Dichlorobenzidine	91941	0.08	0.03	10	10

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona Administrative Code (2022 Edition))**

1,2-Dichloroethane	107062	5	37	15	186,667
1,1-Dichloroethylene	75354	7	7,143	46,667	46,667
1,2-cis-Dichloroethylene	156592	70		1,867	1,867
1,2-trans-Dichloroethylene	156605	100	10,127	18,667	18,667
Dichloromethane	75092	5	2,222	2,333	5,600
2,4-Dichlorophenol	120832	21	59	2,800	2,800
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9,333	9,333
1,2-Dichloropropane	78875	5	17,518	84,000	84,000
1,3-Dichloropropene	542756	0.7	42	93	28,000
Dieldrin	60571	0.002	0.00005	0.3	47
Diethyl phthalate	84662	5,600	8,767	746,667	746,667
Di (2-ethylhexyl) adipate	103231	400		3,889	560,000
Di (2-ethylhexyl) phthalate	117817	6	3	333	18,667
2,4-Dimethylphenol	105679	140	171	18,667	18,667
Dimethyl phthalate	131113				
4,6-Dinitro-o-cresol	534521	0.6	12	75	75
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867
2,4-Dinitrotoluene	121142	14	421	1,867	1,867
2,6-Dinitrotoluene	606202	0.05		7	280
Di-n-octyl phthalate	117840	70		9,333	9,333

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona Administrative Code (2022 Edition))**

Dinoseb	88857	7	12	933	933
1,2-Diphenylhydrazine	122667	0.04	0.2	6	6
Diquat	85007	20	176	2,053	2,053
Endosulfan sulfate	1031078	42	18	5,600	5,600
Endosulfan (Total)	115297	42	18	5,600	5,600
Endothall	145733	100	16,000	18,667	18,667
Endrin	72208	2	0.06	1,120	1,120
Endrin aldehyde	7421933	2	0.06	1,120	1,120
Ethylbenzene	100414	700	2,133	93,333	93,333
Fluoranthene	206440	280	28	37,333	37,333
Fluorene	86737	280	1,067	37,333	37,333
Fluoride	7782414	4,000		140,000	140,000
Glyphosate	1071836	700	266,667	93,333	93,333
Guthion	86500	21	92	2,800	2,800
Heptachlor	76448	0.4	0.00008	1	467
Heptachlor epoxide	1024573	0.2	0.00004	0.5	12
Hexachlorobenzene	118741	1	0.0003	3	747
Hexachlorobutadiene	87683	0.4	18	60	187
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.7	7,467
Hexachlorocyclohexane	319857	0.02	0.02	3	560

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beta					
Hexachlorocyclohexane delta	319868				
Hexachlorocyclohexane gamma (lindane)	58899	0.2	5	700	700
Hexachlorocyclopentadiene	77474	50	74	11,200	11,200
Hexachloroethane	67721	0.9	1	117	653
Hydrogen sulfide	7783064				
Indeno (1,2,3-cd) pyrene	193395	0.4	1	47	47
Iron	7439896				
Isophorone	78591	37	961	4,912	186,667
Lead	7439971	15 T		15 T	15 T
Malathion	121755	140	1,455	18,667	18,667
Manganese	7439965	980		130,667	130,667
Mercury	7439976	2 T		280 T	280 T
Methoxychlor	72435	40		18,667	18,667
Methylmercury	22967926		0.3 mg/ kg		
Mirex	2385855	1	0.0002	0.26	187
Naphthalene	91203	140	1,524	18,667	18,667
Nickel	7440020	210 T	511 T	28,000 T	28,000 T

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona  
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Nitrate	14797558	10,000		3,733.333	3,733.333
Nitrite	14797650	1,000		233.333	233.333
Nitrate + Nitrite		10,000			
Nitrobenzene	98953	14	554	1,867	1,867
p-Nitrophenol	100027				
Nitrosodibutylamine	924163	0.006	0.2	0.9	
Nitrosodiethylamine	55185	0.0002	0.1	0.03	
N-nitrosodimethylamine	62759	0.001	3	0.09	0.09
N-Nitrosodiphenylamine	86306	7.1	6	952	952
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.7	0.7
N-nitrosopyrrolidine	930552	0.02	34	2	
Nonylphenol	104405				
Oxamyl	23135220	200	6452	23,333	23,333
Parathion	56382	42	16	5,600	5,600
Pentachlorobenzene	608935	6		747	747
Paraquat	1910425	32	12,000	4,200	4,200
Pentachlorophenol	87865	1	111	12	4,667
Permethrin	52645531	350	77	46,667	46,667

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona Administrative Code (2022 Edition))**

Phenanthrene	85018				
Phenol	108952	2,100	37	280,000	280,000
Picloram	1918021	500	1,806	65,333	65,333
Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	2	19
Pyrene	129000	210	800	28,000	28,000
Radium 226 + Radium 228		5 pCi/L			
Selenium	7782492	50 T	667 T	4,667 T	4,667 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T
Simazine	112349	4		4,667	4,667
Strontium	7440246	8 pCi/L			
Styrene	100425	100		186,667	186,667
Sulfides					
1,2,4,5-Tetrachlorobenzene	95943	2.1		280	280
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)	1746016	0.00003	0.0000001	0.0007	0.0007
1,1,2,2-Tetrachloroethane	79345	0.2	32,000	23	186,667
Tetrachloroethylene	127184	5	62	2,222	5,600
Thallium	7440280	2 T	0.07 T	9 T	9 T
Toluene	108883	1,000	11,963	149,333	149,333

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona Administrative Code (2022 Edition))**

Toxaphene	8001352	3	0.0003	4	1,867
Tributyltin	688733		0.08	280	280
1,2,4-Trichlorobenzene	120821	70	70	9,333	9,333
1,1,1-Trichloroethane	71556	200	285,714	1,866,667	1,866,667
1,1,2-Trichloroethane	79005	5	16	82	3,733
Trichloroethylene	79016	5	8	101	467
2,4,5- Trichlorophenol	95954	700		93,333	93,333
2,4,6-Trichlorophenol	88062	3.2	2	424	424
2,4,5-Trichlorophenoxy propri-onic acid (2,4,5-TP)	93721	50		29,867	29,867
Trihalomethanes (T)		80			
Tritium	10028178	20,000 pCi/L			
Uranium	7440611	30 D		2,800	2,800
Vinyl chloride	75014	2	5	6	2,800
Xylenes (T)	1330207	10,000		186,667	186,667
Zinc	7440666	2,100 T	5,106 T	280,000 T	280,000 T
2-nitrophenol	88755		No Data	No Data	No Data
1,1-dichloroethane	85343		No Data	No Data	No Data

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona Administrative Code (2022 Edition))**

4-chlorophenyl phenyl ether	7005723		No Data	No Data	No Data
Benzo (ghi) perylene	191242		No Data	No Data	No Data

Footnotes

a. The asbestos standard is 7 million fibers (longer than 10 micrometers) per liter.

b. The aldrin/dieldrin standard is exceeded when the sum of the two compounds exceeds 0.003 µg/L.

c. In lakes, the acute criteria for hydrogen sulfide apply only to water samples taken from the epilimnion, or the upper layer of a lake or reservoir.

d. Hardness, expressed as mg/L CaCO<sub>3</sub>, is determined according to the following criteria:

i. If the receiving water body has an A&Wc or A&Ww designated use, then hardness is based on the hardness of the receiving water body from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.

ii. If the receiving water has an A&Wedw or A&We designated use, then the hardness is based on the hardness of the effluent from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.

iii. The mathematical equations for the hardness-dependent parameter represent the water quality standards. Examples of criteria for the hardness-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.

e. pH is determined according to the following criteria:

i. If the receiving water has an A&Wc or A&Ww designated use, then pH is based on the pH of the receiving water body from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.

ii. If the receiving water body has an A&Wedw or A&We designated use, then the pH is based on the pH of the effluent from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona Administrative Code (2022 Edition))**

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iii. The mathematical equations for ammonia represent the water quality standards. Examples of criteria for ammonia have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.

f. Table 1 abbreviations.

i.  $\mu\text{g/L}$  = micrograms per liter,

ii.  $\text{mg/kg}$  = milligrams per kilogram,

iii.  $\text{pCi/L}$  = picocuries per liter,

iv. D = dissolved,

v. T = total recoverable,

vi. TTHM indicates that the chemical is a trihalomethane.

g. The total trihalomethane (TTHM) standard is exceeded when the sum of these four compounds exceeds  $80 \mu\text{g/L}$ , as a rolling annual average.

h. The concentration of gross alpha particle activity includes radium-226, but excludes radon and uranium.

i. The average annual concentration of beta particle activity and photon emitters from manmade radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirems per year.

j. The mathematical equations for the pH-dependent parameters represent the water quality standards. Examples of criteria for the pH-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.

k. Abbreviations for the mathematical equations are as follows:

$e$  = the base of the natural logarithm and is a mathematical constant equal to 2.71828

$\text{LN}$  = is the natural logarithm

CMC = Criterion Maximum Concentration (acute)

CCC = Criterion Continuous Concentration (chronic)

**History:**

**Table 1 Water Quality Criteria By Designated Use (see f) (Arizona  
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Appendix A repealed; new Appendix A, Table 1 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 1 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 1 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 1 repealed; new Appendix A, Table 1 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 1 amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**APPENDIX B. Surface Waters and Designated Uses**

(Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Appendix B table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.)

**Watersheds:**

BW = Bill Williams

CG = Colorado - Grand Canyon

CL = Colorado - Lower Gila

LC = Little Colorado

MG = Middle Gila

SC = Santa Cruz - Rio Magdalena - Rio Sonoyta

SP = San Pedro - Willcox Playa - Rio Yaqui

SR = Salt River

UG = Upper Gila

VR = Verde River

**Other Abbreviations:**

WWTP = Wastewater Treatment Plant

Km = kilometers

Watershed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife		
				A&Wc	A&Ww	A&Wv
BW	Alamo Lake	34°14'06"/113°35'00"	Deep		A&Ww	
BW	Big Sandy	Headwaters to Alamo			A&Ww	

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	River	Lake				
BW	Bill Williams River	Alamo Lake to confluence with Colorado River				A&Ww
BW	Blue Tank	34°40'14"/112°58'17"				A&Ww
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/ 113°03'37"			A&Wc	
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek				A&Ww
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek				A&Ww
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River				A&Ww
BW	Carter Tank	34°52'27"/112°57'31"				A&Ww
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/ 113°05'46"			A&Wc	
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek				A&Ww
BW	Copper Basin Wash	Headwaters to confluence with			A&Wc	

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		unnamed tributary at 34°28'12"/ 112°35'33"			
BW	Copper Basin Wash	Below confluence with unnamed tributary to confluence with Skull Valley Wash			
BW	Cottonwood Canyon	Headwaters to Bear Trap Spring		A&Wc	
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Sycamore Creek			A&Ww
BW	Date Creek	Headwaters to confluence with Santa Maria River			A&Ww
BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek			A&Ww
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River			A&Ww
BW	Knight Creek	Headwaters to confluence with Big Sandy River			A&Ww
BW	Peeples Canyon (OAW)	Headwaters to confluence with Santa Maria River			A&Ww
BW	Red Lake	35°12'18"/113°03'57"	Sedimentary		A&Ww
BW	Santa Maria River	Headwaters to Alamo Lake			A&Ww
BW	Trout Creek	Headwaters to		A&Wc	

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		confluence with unnamed tributary at 35°06'47"/ 113°13'01"			
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek			A&Ww
CG	Agate Canyon	Headwaters to confluence with the Colorado River			A&Ww
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River			A&Ww
CG	Big Springs Tank	36°36'08"/112°21'01"		A&Wc	
CG	Boucher Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek		A&Wc	
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River			A&Ww
CG	Bright Angel Wash	Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"			
CG	Bright Angel Wash (EDW)	Grand Canyon National Park South Rim WWTP outfall to Coconino			

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		Wash				
CG	Bulrush Canyon Wash	Headwaters to confluence with Kanab Creek				A
CG	Cataract Creek	Headwaters to Santa Fe Reservoir		A&Wc		
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/ 112°11'18"		A&Wc		
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream				
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary				A
CG	Cataract Lake	35°15'04"/112°12'58"	Igneous	A&Wc		
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/ 111°52'20"		A&Wc		
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River			A&Ww	
CG	City Reservoir	35°13'57"/112°11'25"	Igneous	A&Wc		
CG	Clear Creek	Headwaters to confluence with unnamed tributary at		A&Wc		

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		36°07'33"/ 112°00'03"			
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream			
CG	Colorado River	Lake Powell to Lake Mead		A&Wc	
CG	Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/ 113°35'31"		A&Wc	
CG	Cottonwood Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/ 112°11'49"		A&Wc	
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww
CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/ 112°28'20"		A&Wc	
CG	Deer Creek	Below confluence with			A&Ww

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		unnamed tributary to confluence with Colorado River				
CG	Detrital Wash	Headwaters to Lake Mead				
CG	Dogtown Reservoir	35°12'40"/112°07'54"	Igneous	A&Wc		
CG	Dragon Creek	Headwaters to confluence with Milk Creek		A&Wc		
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek			A&Ww	
CG	Garden Creek	Headwaters to confluence with Pipe Creek			A&Ww	
CG	Gonzalez Lake	35°15'26"/112°12'09"	Shallow		A&Ww	
CG	Grand Wash	Headwaters to Colorado River				
CG	Grapevine Creek	Headwaters to confluence with the Colorado River			A&Ww	
CG	Grapevine Wash	Headwaters to Colorado River				
CG	Hakatai Canyon	Headwaters to confluence with the Colorado River			A&Ww	
CG	Hance Creek	Headwaters to			A&Ww	

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		confluence with the Colorado River			
CG	Havasu Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"		A&Wc	
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River			A&Ww
CG	Horn Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Hualapai Wash	Headwaters to Lake Mead			
CG	Jacob Lake	36°42'27"/112°13'50"	Sedimentary	A&Wc	
CG	Kaibab Lake	35°17'04"/112°09'32"	Igneous	A&Wc	
CG	Kanab Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/ 111°54'50"		A&Wc	
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the			A&Ww

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		Colorado River			
CG	Lake Mead	36°06'18"/114°26'33"	Deep	A&Wc	
CG	Lake Powell	36°59'53"/111°08'17"	Deep	A&Wc	
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww
CG	Monument Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Nankoweap Creek	Headwaters to confluence with unnamed tributary at 36°15'29"/ 111°57'26"		A&Wc	
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/ 112°52'34"			A&Ww
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/ 111°55'41"		A&Wc	

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CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww
CG	Olo Canyon	Headwaters to confluence with the Colorado River			A&Ww
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/ 113°27'56"		A&Wc	
CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww
CG	Paria River	Utah border to confluence with the Colorado River			A&Ww
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/ 112°08'13"		A&Wc	
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek			A&Ww
CG	Pipe Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River '			A&Ww
CG	Red Lake	35°40'03"/114°04'07"			A&Ww

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CG	Roaring Springs	36°11'45"/112°02'06"		A&Wc	
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek		A&Wc	
CG	Rock Canyon	Headwaters to confluence with Truxton Wash			
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Ruby Canyon	Headwaters to confluence with the Colorado River			A&Ww
CG	Russell Tank	35°52'21"/111°52'45"		A&Wc	
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/ 112°22'43"		A&Wc	
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww
CG	Santa Fe Reservoir	35°14'31"/112°11'10"	Igneous	A&Wc	
CG	Sapphire Canyon	Headwaters to confluence with the Colorado River			A&Ww
CG	Serpentine Canyon	Headwaters to confluence with the Colorado River			A&Ww

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CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18" / 112°18'07"		A&Wc	
CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww
CG	Short Creek	Headwaters to confluence with Fort Pearce Wash			
CG	Slate Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Stone Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Tapeats Creek	Headwaters to confluence with the Colorado River		A&Wc	
CG	Thunder River	Headwaters to confluence with Tapeats Creek		A&Wc	
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at			

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		36°12'20"/112°03'35"				
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream				
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek				
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww	
CG	Truxton Wash	Headwaters to Red Lake				
CG	Turquoise Canyon	Headwaters to confluence with the Colorado River			A&Ww	
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River			A&Ww	
CG	Unnamed Wash (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/ 111°49'13" to confluence with Cedar Canyon				
CG	Unnamed Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22"				

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		to confluence with Spring Valley Wash			
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"		A&Wc	
CG	Virgin River	Headwaters to confluence with the Colorado River			A&Ww
CG	Vishnu Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River			A&Ww
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek		A&Wc	
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/ 112°21'03"		A&Wc	
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww
CG	Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/ 113°30'40"		A&Wc	
CG	Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash			A&Ww

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CL	A10 Backwater	33°31'45"/114°33'19"	Shallow		A&Ww
CL	A7 Backwater	33°34'27"/114°32'04"	Shallow		A&Ww
CL	Adobe Lake	33°02'36"/114°39'26"	Shallow		A&Ww
CL	Cibola Lake	33°14'01"/114°40'31"	Shallow		A&Ww
CL	Clear Lake	33°01'59"/114°31'19"	Shallow		A&Ww
CL	Columbus Wash	Headwaters to confluence with the Gila River			
CL	Colorado River	Lake Mead to Topock Marsh		A&Wc	
CL	Colorado River	Topock Marsh to Morelos Dam			A&Ww
CL	Gila River	Painted Rock Dam to confluence with the Colorado River			A&Ww
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/ 114°03'46"			
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream			
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with			

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		Sawmill Wash			
CL	Hunter's Hole Backwater	32°31'13"/114°48'07"	Shallow		A&Ww
CL	Imperial Reservoir	32°53'02"/114°27'54"	Shallow		A&Ww
CL	Island Lake	33°01'44"/114°36'42"	Shallow		A&Ww
CL	Laguna Reservoir	32°51'35"/114°28'29"	Shallow		A&Ww
CL	Lake Havasu	34°35'18"/114°25'47"	Deep		A&Ww
CL	Lake Mohave	35°26'58"/114°38'30"	Deep	A&Wc	
CL	Martinez Lake	32°58'49"/114°28'09"	Shallow		A&Ww
CL	Mittry Lake	32°49'17"/114°27'54"	Shallow		A&Ww
CL	Mohave Wash	Headwaters to Lower Colorado River			
CL	Nortons Lake	33°02'30"/114°37'59"	Shallow		A&Ww
CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"	Sedimentary		A&Ww
CL	Pretty Water Lake	33°19'51"/114°42'19"	Shallow		A&Ww
CL	Quigley Pond	32°43'40"/113°57'44"	Shallow		A&Ww
CL	Redondo Lake	32°44'32"/114°29'03"	Shallow		A&Ww
CL	Sacramento	Headwaters to Topock			

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	Wash	Marsh				
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"				A&Ww
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash				
CL	Topock Marsh	34°43'27"/114°28'59"	Shallow			A&Ww
CL	Tyson Wash (EDW)	Town of Quartzsite WWTP outfall at 33°42'39"/ 114°13'10" to 1 km downstream				
CL	Wellton Canal	Wellton-Mohawk Irrigation District				
CL	Wellton Ponds	32°40'32"/114°00'26"				A&Ww
CL	Yuma Proving Ground Pond	32°50'58"/114°26'14"				A&Ww
CL	Yuma Area Canals	Above municipal water treatment plant intakes				
CL	Yuma Area Canals	Below municipal water treatment plant intakes and all drains				
LC	Als Lake	35°02'10"/111°25'17"	Igneous			A&Ww
LC	Ashurst Lake	35°01'06"/111°24'18"	Igneous	A&Wc		

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LC	Atcheson Reservoir	33°59'59"/109°20'43"	Igneous		A&Ww
LC	Auger Creek	Headwaters to confluence with Nutrioso Creek		A&Wc	
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc	
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon		A&Wc	
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc	
LC	Bear Canyon Lake	34°24'00"/111°00'06"	Sedimentary	A&Wc	
LC	Becker Lake	34°09'11"/109°18'23"	Shallow	A&Wc	
LC	Billy Creek	Headwaters to confluence with Show Low Creek		A&Wc	
LC	Black Canyon	Headwaters to confluence with Chevelon Creek		A&Wc	
LC	Black Canyon Lake	34°20'32"/110°40'13"	Sedimentary	A&Wc	
LC	Boot Lake	34°58'54"/111°20'11"	Igneous	A&Wc	
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag			

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LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek		A&Wc	
LC	Bunch Reservoir	34°02'20"/109°26'48"	Igneous	A&Wc	
LC	Camillo Tank	34°55'03"/111°22'40"	Igneous		A&Ww
LC	Carnero Lake	34°06'57"/109°31'42"	Shallow	A&Wc	
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"	Sedimentary	A&Wc	
LC	Chevelon Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek		A&Wc	
LC	Chilson Tank	34°51'43"/111°22'54"	Igneous		A&Ww
LC	Clear Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Clear Creek Reservoir	34°57'09"/110°39'14"	Shallow	A&Wc	
LC	Coconino Reservoir	35°00'05"/111°24'10"	Igneous	A&Wc	
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek		A&Wc	
LC	Colter Reservoir	33°56'39"/109°28'53"	Shallow	A&Wc	

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LC	Concho Creek	Headwaters to confluence with Carrizo Wash		A&Wc	
LC	Concho Lake	34°26'37"/109°37'40"	Shallow	A&Wc	
LC	Cow Lake	34°53'14"/111°18'51"	Igneous		A&Ww
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Cragin Reservoir (formerly Blue Ridge Reservoir)	34°32'40"/111°11'33"	Deep	A&Wc	
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"			A&Ww
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc	
LC	Daves Tank	34°44'22"/111°17'15"			A&Ww
LC	Deep Lake	35°03'34"/111°25'00"	Igneous		A&Ww
LC	Dry Lake (EDW)	34°38'02"/110°23'40"	EDW		
LC	Ducksnest Lake	34°59'14"/111°23'57"			A&Ww
LC	East Clear Creek	Headwaters to confluence with Clear Creek		A&Wc	

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LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"	Igneous		A&Ww
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"	EDW		
LC	Fish Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Fool's Hollow Lake	34°16'30"/110°03'43"	Igneous	A&Wc	
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc	
LC	Geneva Reservoir	34°01'45"/109°31'46"	Igneous		A&Ww
LC	Hall Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc	
LC	Hay Lake	34°00'11"/109°25'57"	Igneous	A&Wc	
LC	Hog Wallow Lake	33°58'57"/109°25'39"	Igneous	A&Wc	
LC	Horse Lake	35°03'55"/111°27'50"			A&Ww
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek		A&Wc	

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LC	Hulsey Lake	33°55'58"/109°09'40"	Sedimentary	A&Wc	
LC	Indian Lake	35°00'39"/111°22'41"			A&Ww
LC	Jacks Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Jarvis Lake	33°58'59"/109°12'36"	Sedimentary		A&Ww
LC	Kinnikinick Lake	34°53'53"/111°18'18"	Igneous	A&Wc	
LC	Knoll Lake	34°25'38"/111°05'13"	Sedimentary	A&Wc	
LC	Lake Humphreys (EDW)	35°11'51"/111°35'19"	EDW		
LC	Lake Mary, Lower	35°06'21"/111°34'38"	Igneous	A&Wc	
LC	Lake Mary, Upper	35°03'23"/111°28'34"	Igneous	A&Wc	
LC	Lake of the Woods	34°09'40"/109°58'47"	Igneous	A&Wc	
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir		A&Wc	
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River		A&Wc	
LC	Lee Valley Reservoir	33°56'29"/109°30'04"	Igneous	A&Wc	
LC	Leonard	Headwaters to		A&Wc	

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	Canyon Creek	confluence with Clear Creek			
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek		A&Wc	
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork		A&Wc	
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork		A&Wc	
LC	Lily Creek	Headwaters to confluence with Coyote Creek		A&Wc	
LC	Little Colorado River	Headwaters to Lyman Reservoir		A&Wc	
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River		A&Wc	
LC	Little Colorado River	Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands			A&Ww
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Little	Headwaters to		A&Wc	

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	Colorado River, South Fork	confluence with the Little Colorado River			
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs		A&Wc	
LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River		A&Wc	
LC	Little George Reservoir	34°00'37"/109°19'15"	Igneous		A&Ww
LC	Little Mormon Lake	34°17'00"/109°58'06"	Igneous		A&Ww
LC	Little Ortega Lake	34°22'47"/109°40'06"	Igneous	A&Wc	
LC	Long Lake, Lower	34°47'16"/111°12'40"	Igneous	A&Wc	
LC	Long Lake, Upper	35°00'08"/111°21'23"	Igneous	A&Wc	
LC	Long Tom Tank	34°20'35"/110°49'22"		A&Wc	
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"	EDW		
LC	Lyman Reservoir	34°21'21"/109°21'35"	Deep	A&Wc	

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LC	Mamie Creek	Headwaters to confluence with Coyote Creek		A&Wc		
LC	Marshall Lake	35°07'18"/111°32'07"	Igneous	A&Wc		
LC	McKay Reservoir	34°01'27"/109°13'48"		A&Wc		
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc		
LC	Mexican Hay Lake	34°01'58"/109°21'25"	Igneous	A&Wc		
LC	Milk Creek	Headwaters to confluence with Hulsey Creek		A&Wc		
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc		
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek		A&Wc		
LC	Mineral Creek	Headwaters to Little Ortega Lake		A&Wc		
LC	Mormon Lake	34°56'38"/111°27'25"	Shallow	A&Wc		
LC	Morton Lake	34°53'37"/111°17'41"	Igneous	A&Wc		
LC	Mud Lake	34°55'19"/111°21'29"	Shallow		A&Ww	

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LC	Ned Lake (EDW)	34°17'17"/110°03'22"	EDW		
LC	Nelson Reservoir	34°02'52"/109°11'19"	Sedimentary	A&Wc	
LC	Norton Reservoir	34°03'57"/109°31'27"	Igneous		A&Ww
LC	Nutriosio Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Paddy Creek	Headwaters to confluence with Nutriosio Creek		A&Wc	
LC	Phoenix Park Wash	Headwaters to Dry Lake			
LC	Pierce Seep	34°23'39"/110°31'17"		A&Wc	
LC	Pine Tank	34°46'49"/111°17'21"	Igneous		A&Ww
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"	EDW		
LC	Porter Creek	Headwaters to confluence with Show Low Creek		A&Wc	
LC	Potato Lake	35°03'15"/111°24'13"	Igneous	A&Wc	
LC	Pratt Lake	34°01'32"/109°04'18"	Sedimentary	A&Wc	
LC	Puerco River	Headwaters to confluence with the Little Colorado River			A&Ww
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall			

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		at 35°12'52"/109°19'40" to 0.5 km downstream			
LC	Rainbow Lake	34°09'00"/109°59'09"	Shallow Igneous	A&Wc	
LC	Reagan Reservoir	34°02'09"/109°08'41"	Igneous		A&Ww
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"			
LC	Rio de Flag (EDW)	From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash			
LC	River Reservoir	34°02'01"/109°26'07"	Igneous	A&Wc	
LC	Rogers Reservoir	33°56'30"/109°16'20"	Igneous		A&Ww
LC	Rudd Creek	Headwaters to confluence with Nutrioso Creek		A&Wc	
LC	Russel Reservoir	33°59'29"/109°20'01"	Igneous		A&Ww
LC	San Salvador Reservoir	33°58'51"/109°19'55"	Igneous	A&Wc	
LC	Scott Reservoir	34°10'31"/109°57'31"	Igneous	A&Wc	
LC	Show Low Creek	Headwaters to confluence with Silver Creek		A&Wc	

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LC	Show Low Lake	34°11'36"/110°00'12"	Igneous	A&Wc	
LC	Silver Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Slade Reservoir	33°59'41"/109°20'26"	Igneous		A&Ww
LC	Soldiers Annex Lake	34°47'15"/111°13'51"	Igneous	A&Wc	
LC	Soldiers Lake	34°47'47"/111°14'04"	Igneous	A&Wc	
LC	Spaulding Tank	34°30'17"/111°02'06"			A&Ww
LC	Sponseller Lake	34°14'09"/109°50'45"	Igneous	A&Wc	
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"	Igneous		A&Ww
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"	EDW		
LC	Tremaine Lake	34°46'02"/111°13'51"	Igneous	A&Wc	
LC	Tunnel Reservoir	34°01'53"/109°26'34"	Igneous	A&Wc	
LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/ 110°38'13" to confluence with Black Canyon Creek			

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LC	Unnamed Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/110°31'29" to Pierce Seep			
LC	Unnamed Wash (EDW)	Black Mesa Ranger Station WWTP outfall at 34°23'35"/110°33'36" to confluence of Oklahoma Flat Draw			
LC	Vail Lake	35°05'23"/111°30'46"	Igneous	A&Wc	
LC	Walnut Creek	Headwaters to confluence with Billy Creek		A&Wc	
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc	
LC	Water Canyon Reservoir	34°00'16"/109°20'05"	Igneous		A&Ww
LC	Whale Lake (EDW)	35°11'13"/111°35'21"	EDW		
LC	Whipple Lake	'34°16'49"/109°58'29"	Igneous		A&Ww
LC	White Mountain Lake	34°21'57"/109°59'21"	Igneous	A&Wc	
LC	White Mountain Reservoir	34°00'12"/109°30'39"	Igneous	A&Wc	
LC	Willow Creek	Headwaters to		A&Wc	

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		confluence with Clear Creek			
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc	
LC	Willow Springs Lake	34°18'13"/110°52'16"	Sedimentary	A&Wc	
LC	Woodland Reservoir	34°07'35"/109°57'01"	Igneous	A&Wc	
LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc	
LC	Woods Canyon Lake	34°20'09"/110°56'45"	Sedimentary	A&Wc	
LC	Zuni River	Headwaters to confluence with the Little Colorado River		A&Wc	
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/ 112°16'18"			
MG	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169			
MG	Agua Fria River	From State Route 169 to Lake Pleasant			A&Ww
MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/ 112°18'32"			

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MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream				
MG	Agua Fria River	Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"				
MG	Agua Fria River	From City of Avondale WWTP outfall to confluence with Gila River				
MG	Alvord Park Lake	35th Avenue & Baseline Road, Phoenix at 33°22'23"/ 112°08'20"	Urban		A&Ww	
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash				
MG	Antelope Creek	Headwaters to confluence with Martinez Wash			A&Ww	
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/ 112°46'15"				
MG	Ash Creek	Headwaters to confluence with Tex Canyon			A&Wc	
MG	Ash Creek	Below confluence with Tex Canyon to confluence with Agua Fria River				A&Ww

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MG	Beehive Tank	32°52'37"/111°02'20"			A&Ww
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch		A&Wc	
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River			A&Ww
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River			A&Ww
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River			A&Ww
MG	Bonsall Park Lake	59th Avenue & Bethany Home Road, Phoenix at 33°31'24"/112°11'08"	Urban		A&Ww
MG	Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/111°56'19"	Urban		A&Ww
MG	Cave Creek	Headwaters to the Cave Creek Dam			A&Ww
MG	Cave Creek	Cave Creek Dam to the Arizona Canal			
MG	Centennial Wash	Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"			
MG	Centennial Wash Ponds	33°54'52"/113°23'47"			A&Ww

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MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"	Urban		A&Ww
MG	Cortez Park Lake	35th Avenue & Dunlap, Glendale at 33°34'13"/112°07'52"	Urban		A&Ww
MG	Desert Breeze Lake	Galaxy Drive, West Chandler at 33°18'47"/111°55'10"	Urban		A&Ww
MG	Devils Canyon	Headwaters to confluence with Mineral Creek			A&Ww
MG	Dobson Lake	Dobson Road & Los Lagos Vista Avenue, Mesa at 33°22'48"/111°52'35"	Urban		A&Ww
MG	East Maricopa Flood-way	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary			A&We
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/111°54'53"	Urban		A&Ww
MG	Encanto Park Lake	15th Avenue & Encanto Blvd., Phoenix at 33°28'28"/112°05'18"	Urban		A&Ww
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/112°21'06"	Urban		A&Ww
MG	French Gulch	Headwaters to confluence with Hassayampa River			A&Ww

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MG	Galena Gulch	Headwaters to confluence with the Agua Fria River				
MG	Galloway Wash (EDW)	Town of Cave Creek WWTP outfall at 33°50'15"/ 111°57'35" to confluence with Cave Creek				
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam			A&Ww	
MG	Gila River	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"				
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road				
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary				
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam				
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam			A&Ww	
MG	Granada Park Lake	6505 North 20th Street, Phoenix at 33°31'56"/ 112°02'16"	Urban		A&Ww	
MG	Groom Creek	Headwaters to confluence with the		A&Wc		

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		Hassayampa River				
MG	Hassayampa Lake	34°25'45"/112°25'33"	Igneous	A&Wc		
MG	Hassayampa River	Headwaters to confluence with Copper Creek		A&Wc		
MG	Hassayampa River	Below confluence with Copper Creek to the confluence with Blind Indian Creek.			A&Ww	
MG	Hassayampa River	Below confluence with Blind Indian Creek to the Buckeye Irrigation Company Canal				
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River			A&Ww	
MG	Horsethief Lake	34°09'42"/112°17'57"	Igneous	A&Wc		
MG	Indian Bend Wash	Headwaters to confluence with the Salt River				
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"	Urban		A&Ww	
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/111°54'37"	Urban		A&Ww	
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/ 111°56'22"	Urban		A&Ww	

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MG	Lake Pleasant	33°53'46"/112°16'29"	Deep		A&Ww
MG	Lake Pleasant, Lower	33°50'32"/112°16'03"			A&Ww
MG	Lion Canyon	Headwaters to confluence with Weaver Creek			A&Ww
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at			A&Ww
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/ 112°21'07"		A&Wc	
MG	Lynx Creek	Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River			A&Ww
MG	Lynx Lake	34°31'07"/112°23'07"	Deep	A&Wc	
MG	Maricopa Park Lake	33°35'28"/112°18'15"	Urban		A&Ww
MG	Martinez Canyon	Headwaters to confluence with Box Canyon			A&Ww
MG	Martinez Wash	Headwaters to confluence with the Hassayampa River			A&Ww
MG	McKellips Park Lake	Miller Road & McKellips Road,	Urban		A&Ww

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		Scottsdale at 33°27'14"/111°54'49"			
MG	McMicken Wash (EDW)	City of Peoria Jomax WWTP outfall at 33°43'31"/ 112°20'15" to confluence with Agua Fria River			
MG	Mineral Creek	Headwaters to 33°12'34"/110°59'58"			A&Ww
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34'			
MG	Mineral Creek	End of diversion channel to confluence with Gila River			A&Ww
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River			A&Ww
MG	New River	Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"			A&Ww
MG	New River	Below Interstate 17 to confluence with Agua Fria River			
MG	Painted Rock Reservoir	33°04'23"/113°00'38"	Sedimentary		A&Ww
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"	Urban		A&Ww

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MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"	Urban		A&Ww
MG	Perry Mesa Tank	34°11'03"/112°02'01"			A&Ww
MG	Phoenix Area Canals	Granite Reef Dam to all municipal WTP intakes			
MG	Phoenix Area Canals	Below municipal WTP intakes and all other locations			
MG	Picacho Reservoir	32°51'10"/111°28'25"	Shallow		A&Ww
MG	Poland Creek	Headwaters to confluence with Lorena Gulch		A&Wc	
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek			A&Ww
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/ 111°07'44"			A&Ww
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon			
MG	Queen Creek	Below Potts Canyon to Whitlow Dam			A&Ww
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River			

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MG	Riverview Park Lake	Dobson Road & 8th Street, Mesa at 33°25'50"/ 111°52'29"	Urban		A&Ww
MG	Roadrunner Park Lake	36th Street & Cactus, Phoenix at 33°35'56"/ 112°00'21"	Urban		A&Ww
MG	Salt River	Verde River to 2 km below Granite Reef Dam			A&Ww
MG	Salt River	2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"			
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake			
MG	Salt River	Below Tempe Town Lake to Interstate 10 bridge			
MG	Salt River	Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at 33°24'44"/ 112°07'59"			A&Ww
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River			
MG	Siphon Draw (EDW)	Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream			
MG	Sycamore	Headwaters to		A&Wc	

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	Creek	confluence with Tank Canyon				
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River			A&Ww	
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"	Urban		A&Ww	
MG	The Lake Tank	32°54'14"/111°04'15"			A&Ww	
MG	Tule Creek	Headwaters to confluence with the Agua Fria River			A&Ww	
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/ 112°21'33"		A&Wc		
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek			A&Ww	
MG	Unnamed Wash (EDW)	Gila Bend WWTP outfall to confluence with the Gila River				
MG	Unnamed Wash (EDW)	Luke Air Force Base WWTP outfall at 33°32'21"/ 112°19'15" to confluence with the Agua Fria River				
MG	Unnamed Wash (EDW)	North Florence WWTP outfall at 33°03'50"/ 111°23'13" to				

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		confluence with Gila River			
MG	Unnamed Wash (EDW)	Town of Prescott Valley WWTP outfall at 34°35'16"/ 112°16'18" to confluence with the Agua Fria River			
MG	Unnamed Wash (EDW)	Town of Cave Creek WRF outfall at 33°48'02"/ 111°59'22" to confluence with Cave Creek			
MG	Wagner Wash (EDW)	City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km downstream			
MG	Walnut Canyon Creek	Headwaters to confluence with the Gila River			A&Ww
MG	Weaver Creek	Headwaters to confluence with Antelope Creek, tributary to Martinez Wash			A&Ww
MG	White Canyon Creek	Headwaters to confluence with Walnut Canyon Creek			A&Ww
MG	Yavapai Lake (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash	EDW		
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/ 110°43'52"	Urban		A&Ww

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SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail			A&Ww	
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek				A
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"				A
SC	Alambre Wash	Headwaters to confluence with Brawley Wash				A
SC	Alamo Wash	Headwaters to confluence with Rillito Creek				A
SC	Altar Wash	Headwaters to confluence with Brawley Wash				A
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"				A
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"			A&Ww	
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek				A
SC	Arivaca Creek	Headwaters to confluence with Altar Wash			A&Ww	

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SC	Arivaca Lake	31°31'52"/111°15'06"	Igneous		A&Ww
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash			
SC	Bear Grass Tank	31°33'01"/111°11'03"			A&Ww
SC	Big Wash	Headwaters to confluence with Cañada del Oro			
SC	Black Wash (EDW)	Pima County WWMD Avra Valley WWTP outfall at 32°09'58"/111°11'17" to confluence with Brawley Wash			
SC	Bog Hole Tank	31°28'36"/110°37'09"			A&Ww
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash			
SC	California Gulch	Headwaters To U.S./Mexico border			A&Ww
SC	Cañada del Oro	Headwaters to State Route 77			A&Ww
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River			
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon			A&Ww
SC	Cienega	From confluence with			A&Ww

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	Creek (OAW)	Gardner Canyon to USGS gaging station (#09484600)				
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/ 110°38'49"				A
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"			A&Ww	
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"				A
SC	Davidson Canyon (OAW)	From unnamed spring to confluence with Cienega Creek			A&Ww	
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/ 110°38'17"				A
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"			A&Ww	
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/ 110°36'58"				A
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek			A&Ww	
SC	Flux Canyon	Headwaters to confluence with Alum				A

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		Gulch			
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon		A&Wc	
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek			A&Ww
SC	Greene Wash	Santa Cruz River to the Tohono O'odham Indian Reservation boundary			
SC	Greene Wash	Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/111°56'48"			
SC	Harshaw Creek	Headwaters to confluence with Sonoita Creek at			
SC	Hit Tank	32°43'57"/111°03'18"			A&Ww
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border			A&Ww
SC	Huachuca Tank	31°21'11"/110°30'18"			A&Ww
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River			
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at	Urban		A&Ww

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		32°10'49"/ 111°00'27"			
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/ 110°49'00"	Urban		A&Ww
SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/ 110°47'49"		A&Wc	
SC	Lemmon Canyon Creek	Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek			A&Ww
SC	Los Robles Wash	Headwaters to confluence with the Santa Cruz River			
SC	Madera Canyon Creek	Headwaters to confluence with unnamed tributary at 31°43'42"/ 110°52'51"		A&Wc	
SC	Madera Canyon Creek	Below unnamed tributary at 31°43'42"/110°52'51 to confluence with the Santa Cruz River			A&Ww
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek			A&Ww
SC	Nogales Wash	Headwaters to confluence with Potrero Creek			A&Ww
SC	Oak Tree Canyon	Headwaters to confluence with			

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		Cienega Creek			
SC	Palisade Canyon	Headwaters to confluence with unnamed tributary at 32°22'33"/110°45'31"		A&Wc	
SC	Palisade Canyon	Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon			A&Ww
SC	Pantano Wash	Headwaters to confluence with Tanque Verde Creek			
SC	Parker Canyon Creek	Headwaters to confluence with unnamed tributary at 31°24'17"/ 110°28'47"	A&Wc		
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border			A&Ww
SC	Parker Canyon Lake	31°25'35"/110°27'15"	Deep	A&Wc	
SC	Patagonia Lake	31°29'56"/110°50'49"	Deep		A&Ww
SC	Peña Blanca Lake	31°24'15"/111°05'12"	Igneous		A&Ww
SC	Potrero Creek	Headwaters to Interstate 19			
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River			A&Ww

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SC	Puertocito Wash	Headwaters to confluence with Altar Wash				
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"			A&Ww	
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek			A&Ww	
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River				
SC	Romero Canyon Creek	Headwaters to confluence with unnamed tributary at 32°24'29"/ 110°50'39"		A&Wc		
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash			A&Ww	
SC	Rose Canyon Creek	Headwaters to confluence with Sycamore Canyon		A&Wc		
SC	Rose Canyon Lake	32°23'13"/110°42'38"	Igneous	A&Wc		
SC	Ruby Lakes	31°26'29"/111°14'22"	Igneous		A&Ww	
SC	Sabino Canyon	Headwaters to 32°23'20"/110°47'06"		A&Wc		
SC	Sabino Canyon	Below 32°23'20"/110°47'06" to confluence with Tanque Verde River			A&Ww	

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SC	Salero Ranch Tank	31°35'43"/110°53'25"			A&Ww
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border			A&Ww
SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"			A&Ww
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the Tubac Bridge Josephine Canyon			
SC	Santa Cruz River	Josephine Canyon to Agua Nueva WRF outfall at 32°17'04"/111°01'45"			
SC	Santa Cruz River (EDW)	Agua Nueva WRF outfall to Baumgartner Road			
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River			
SC	Santa Cruz River	Baumgartner Road to the Ak Chin Indian Reservation boundary			
SC	Santa Cruz Wash, North Branch	Headwaters to City of Casa Grande WRF outfall at 32°54'57"/111°47'13"			
SC	Santa Cruz Wash, North Branch	City of Casa Grande WRF outfall to 1 km downstream			

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	(EDW)				
SC	Santa Rosa Wash	Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation			
SC	Santa Rosa Wash (EDW)	Palo Verde Utilities CO-WRF outfall at 33°04'20"/ 112°01'47" to the Chin Indian Reservation			
SC	Soldier Tank	32°25'34"/110°44'43"		A&Wc	
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/ 110°45'31"			
SC	Sonoita Creek (EDW)	Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall			
SC	Sonoita Creek	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River			A&Ww
SC	Split Tank	31°28'11"/111°05'12"			A&Ww
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro			A&Ww

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SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"		A&Wc	
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir			A&Ww
SC	Sycamore Canyon	Headwaters to the U.S./Mexico border			A&Ww
SC	Sycamore Reservoir	32°20'57"/110°47'38"		A&Wc	
SC	Tanque Verde Creek	Headwaters to Houghton Road			A&Ww
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek			A
SC	Three R Canyon	Headwaters to Unnamed Trib to Three R Canyon at 31°28'26" / 110°46'04"			A
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)			A&Ww
SC	Three R Canyon	From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek			A
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River			A
SC	Unnamed Wash (EDW)	Oracle Sanitary District WWTP outfall at			

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		32°36'54"/ 110°48'02" to 5 km downstream				
SC	Unnamed Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash				
SC	Unnamed Wash (EDW)	Saddlebrook WWTP outfall at 32°32'00"/110°53'01" to confluence with Cañada del Oro				
SC	Vekol Wash	Headwater to Santa Cruz Wash: Those reaches not located on the Ak-Chin, Tohono O'odham and Gila River Indian Reservations				
SC	Wakefield Canyon	Headwaters to confluence with unnamed tributary at 31°52'48"/ 110°26'27"		A&Wc		
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek			A&Ww	
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/ 111°05'47"			A&Ww	
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa				

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		Cruz River			
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw			A&Ww
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch			A&Ww
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area			A&Ww
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River			A&Ww
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"			A&Ww
SP	Babocomari River	Headwaters to confluence with the San Pedro River			A&Ww
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/ 110°13'22"		A&Wc	
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek			A&Ww
SP	Bass Canyon Tank	32°24'00"/110°13'00"			A&Ww

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SP	Bear Creek	Headwaters to U.S./Mexico border			A&Ww
SP	Big Creek	Headwaters to confluence with Pitchfork Canyon		A&Wc	
SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°31'04"/ 110°24'47", headwater lake in Blacktail Canyon			A&Ww
SP	Black Draw	Headwaters to the U.S./Mexico border			A&Ww
SP	Booger Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank			A&Ww
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek			
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/ 110°32'10"			A&Ww
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River			A&Ww
SP	Bull Tank	32°31'13"/110°12'52"			A&Ww
SP	Bullock	Headwaters to			A&Ww

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	Canyon	confluence with Buehman Canyon			
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/ 110°15'48"		A&Wc	
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww
SP	Copper Creek	Headwaters to confluence with Prospect Canyon			A&Ww
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River			
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/ 110°20'11"		A&Wc	
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek			A&Ww
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon			A&Ww
SP	Double R Canyon Creek	Headwaters to confluence with Bass Canyon			A&Ww
SP	Dry Canyon	Headwaters to confluence with			A&Ww

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		Whitewater draw			
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/ 110°19'44"	Sedimentary		A&Ww
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash			A&Ww
SP	Fly Pond	Fort Huachuca Military Reservation at 31°32'53"/ 110°21'16"			A&Ww
SP	Fourmile Creek	Headwaters to confluence with Aravaipa Creek			A&Ww
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/ 110°23'46"		A&Wc	
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek			A&Ww
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon			A&Ww
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw			A&Ww
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/ 110°19'44"		A&Wc	

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SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww
SP	Glance Creek	Headwaters to confluence with Whitewater Draw			A&Ww
SP	Gold Gulch	Headwaters to U.S./Mexico border			A&Ww
SP	Goudy Canyon Wash	Headwaters to confluence with Grant Creek		A&Wc	
SP	Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/ 109°56'37"		A&Wc	
SP	Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/ 110°19'49"	Sedimentary		A&Ww
SP	Greenbush Draw	From U.S./Mexico border to confluence with San Pedro River			
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/ 109°22'17"			A&Ww
SP	High Creek	Headwaters to confluence with unnamed tributary at 32°33'08"/ 110°14'42"		A&Wc	

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SP	High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww
SP	Horse Camp Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww
SP	Hot Springs Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/ 109°43'32"			A&Ww
SP	Lake Cochise (EDW)	South of Twin Lakes Municipal Golf Course at 32°13'50"/109°49'27"	EDW		
SP	Leslie Canyon Creek	Headwaters to confluence with Whitewater Draw			A&Ww
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/ 110°18'34"			A&Ww
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon			A&Ww
SP	Miller Canyon	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"		A&Wc	
SP	Miller Canyon	Below Broken Arrow Ranch Road to confluence with the San Pedro River			A&Ww

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SP	Moonshine Creek	Headwaters to confluence with Post Creek		A&Wc	
SP	Mountain View Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/ 110°18'52"	Sedimentary		A&Ww
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/ 109°54'02"			A&Ww
SP	Mule Gulch	The Lavender Pit to the Highway 80 bridge at 31°26'30"/109°49'28"			
SP	Mule Gulch	Below the Highway 80 bridge to confluence with Whitewater Draw			
SP	Oak Grove Canyon	Headwaters to confluence with Turkey Creek			A&Ww
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/ 110°21'37"	Sedimentary		A&Ww
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww
SP	Parsons Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww
SP	Pinery Creek	Headwaters to State Highway 181		A&Wc	
SP	Pinery Creek	Below State Highway			A&Ww

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		181 to terminus near Willcox Playa			
SP	Post Creek	Headwaters to confluence with Grant Creek		A&Wc	
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"		A&Wc	
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash			A&Ww
SP	Rattlesnake Creek	Headwaters to confluence with Brush Canyon		A&Wc	
SP	Rattlesnake Creek	Below confluence with Brush Canyon to confluence with Aravaipa Creek			A&Ww
SP	Redfield Canyon	Headwaters to confluence with unnamed tributary at 32°33'40"/ 110°18'42"		A&Wc	
SP	Redfield Canyon	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww
SP	Riggs Lake	32°42'28"/109°57'53"	Igneous	A&Wc	
SP	Rock Creek	Headwaters to confluence with Turkey Creek Alc			

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SP	Rucker Canyon	Headwaters to confluence with Whitewater Draw		A&Wc	
SP	Rucker Canyon Lake	31°46'46"/109°18'30"	Shallow	A&Wc	
SP	San Pedro River	U.S./ Mexico Border to Buehman Canyon			A&Ww
SP	San Pedro River	From Buehman canyon to confluence with the Gila River			A&Ww
SP	Snow Flat Lake	32°39'10"/109°51'54"	Igneous	A&Wc	
SP	Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/109°54'41"		A&Wc	
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon			A&Ww
SP	Swamp Springs Canyon	Headwaters to confluence with Redfield Canyon			A&Ww
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/ 110°26'11"	Sedimentary		A&Ww
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/ 110°26'10"	Sedimentary		A&Ww
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek			A&Ww

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SP	Turkey Creek	Headwaters to confluence with Rock Creek		A&Wc	
SP	Turkey Creek	Below confluence with Rock Creek to terminus near Willcox Playa			A&Ww
SP	Unnamed Wash (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream			
SP	Virgus Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"			
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash			
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River			
SP	Ward Canyon	Headwaters to confluence with Turkey Creek		A&Wc	
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/ 109°43'48"			
SP	Whitewater	Below confluence with			A&Ww

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	Draw	unnamed tributary to U.S./ Mexico border			
SP	Willcox Playa	From 32°08'19"/109°50'59" in the Sulphur Springs Valley	Sedimentary		A&Ww
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/ 110°20'12"	Igneous		A&Ww
SR	Ackre Lake	33°37'01"/109°20'40"		A&Wc	
SR	Apache Lake	33°37'23"/111°12'26"	Deep		A&Ww
SR	Barnhard Creek	Headwaters to confluence with unnamed tributary at 34°05'37/ 111°26'40"		A&Wc	
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek			A&Ww
SR	Basin Lake	33°55'00"/109°26'09"	Igneous		A&Ww
SR	Bear Creek	Headwaters to confluence with the Black River		A&Wc	
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River		A&Wc	
SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc	
SR	Bear Wallow	Headwaters to		A&Wc	

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	Creek, South Fork (OAW)	confluence with Bear Wallow Creek				
SR	Beaver Creek	Headwaters to confluence with Black River			A&Wc	
SR	Big Lake	33°52'36"/109°25'33"	Igneous		A&Wc	
SR	Black River	Headwaters to confluence with Salt River			A&Wc	
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River			A&Wc	
SR	Black River, North Fork of East Fork	Headwaters to confluence with Boneyard Creek			A&Wc	
SR	Black River, West Fork	Headwaters to confluence with the Black River			A&Wc	
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road				
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash				
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek			A&Wc	
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork			A&Wc	

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SR	Boulder Creek	Headwaters to confluence with LaBarge Creek			A&Ww
SR	Campaign Creek	Headwaters to Roosevelt Lake			A&Ww
SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary		A&Wc	
SR	Canyon Lake	33°32'44"/111°26'19"	Deep		A&Ww
SR	Centerfire Creek	Headwaters to confluence with the Black River		A&Wc	
SR	Chambers Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River		A&Wc	
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/ 110°56'07"		A&Wc	
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River			A&Ww
SR	Christopher Creek	Headwaters to confluence with Tonto Creek		A&Wc	
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/ 110°52'58"		A&Wc	

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SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww
SR	Conklin Creek	Headwaters to confluence with the Black River		A&Wc	
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41" / 110°54'26"		A&Wc	
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River			A&Ww
SR	Corduoy Creek	Headwaters to confluence with Fish Creek		A&Wc	
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork		A&Wc	
SR	Crescent Lake	33°54'38" / 109°25'18"	Shallow	A&Wc	
SR	Deer Creek	Headwaters to confluence with the Black River, East Fork		A&Wc	
SR	Del Shay Creek	Headwaters to confluence with Gun Creek			A&Ww
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46" / 110°52'35"		A&Wc	

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SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww
SR	Dipping V a t Reservoir	33°55'47"/109°25'31"	Igneous		A&Ww
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek		A&Wc	
SR	Fish Creek	Headwaters to confluence with the Black River		A&Wc	
SR	Fish Creek	Headwaters to confluence with the Salt River			A&Ww
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/ 111°25'10"		A&Wc	
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon		A&Wc	
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek			A&Ww
SR	Greenback Creek	Headwaters to confluence with Tonto Creek			A&Ww

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SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/ 111°00'15"		A&Wc	
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek		A&Wc	
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc	
SR	Home Creek	Headwaters to confluence with the Black River, West Fork		A&Wc	
SR	Horse Creek	Headwaters to confluence with the Black River, West Fork		A&Wc	
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/ 110°50'07"		A&Wc	
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww
SR	Horton Creek	Headwaters to confluence with Tonto Creek		A&Wc	
SR	Houston Creek	Headwaters to confluence with Tonto			A&Ww

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		Creek			
SR	Hunter Creek	Headwaters to confluence with Christopher Creek		A&Wc	
SR	LaBarge Creek	Headwaters to Canyon Lake			A&Ww
SR	Lake Sierra Blanca	33°52'25"/109°16'05"		A&Wc	
SR	Miami Wash	Headwaters to confluence with Pinal Creek			
SR	Mule Creek	Headwaters to confluence with Canyon Creek		A&Wc	
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River		A&Wc	
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"		A&Wc	
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek			A&Ww
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"			
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash			

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		(Globe WWTP) to 33°26'55"/ 110°49' 25"			
SR	Pinal Creek	From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/ 110°51'55"			
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"			
SR	Pinal Creek	From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"			A&Ww
SR	Pinal Creek	From unnamed tributary to confluence with Salt River			A&Ww
SR	Pine Creek	Headwaters to confluence with the Salt River			A&Ww
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/ 110°54'58"		A&Wc	
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww
SR	Pole Corral Lake	33°30'38"/110°00'15"	Igneous		A&Ww
SR	Pueblo	Headwaters to		A&Wc	

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	Canyon Creek	confluence with unnamed tributary at 33°50'23"/ 110°51'37"			
SR	Pueblo Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww
SR	Reevis Creek	Headwaters to confluence with Pine Creek			A&Ww
SR	Reservation Creek	Headwaters to confluence with the Black River		A&Wc	
SR	Reynolds Creek	Headwaters to confluence with Workman Creek		A&Wc	
SR	Roosevelt Lake	33°52'17"/111°00'17"	Deep		A&Ww
SR	Russell Gulch	From Headwaters to confluence with Miami Wash			
SR	Rye Creek	Headwaters to confluence with Tonto Creek			A&Ww
SR	Saguaro Lake	33°33'44"/111°30'55"	Deep		A&Ww
SR	Salome Creek	Headwaters to confluence with the Salt River			A&Ww
SR	Salt House Lake	33°57'04"/109°20'11"	Igneous		A&Ww

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SR	Salt River	White Mountain Apache Reservation Boundary at 33°48'52"/110°31'33" to Roosevelt Lake			A&Ww
SR	Salt River	Theodore Roosevelt Dam to 2 km below Granite Reef Dam			A&Ww
SR	Slate Creek	Headwaters to confluence with Tonto Creek			A&Ww
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River		A&Wc	
SR	Spring Creek	Headwaters to confluence with Tonto Creek			A&Ww
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc	
SR	Thomas Creek	Headwaters to confluence with Beaver Creek		A&Wc	
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River		A&Wc	
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/ 111°04'18"		A&Wc	
SR	Tonto Creek	Below confluence with unnamed tributary to			A&Ww

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		Roosevelt Lake			
SR	Turkey Creek	Headwaters to confluence with Rock Creek		A&Wc	
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek		A&Wc	
SR	Willow Creek	Headwaters to confluence with Beaver Creek		A&Wc	
SR	Workman Creek	Headwaters to confluence with Reynolds Creek		A&Wc	
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek			A&Ww
UG	Apache Creek	Headwaters to confluence with the Gila River			A&Ww
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/ 109°51'45"		A&Wc	
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww
UG	Bennett Wash	Headwaters to the Gila River			A
UG	Bitter Creek	Headwaters to			A&Ww

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		confluence with the Gila River			
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/ 109°12'14"		A&Wc	
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River			A&Ww
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River			A&Ww
UG	Buckelew Creek	Headwaters to confluence with Castle Creek		A&Wc	
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River		A&Wc	
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc	
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek		A&Wc	
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary			A&Ww
UG	Cave Creek	Below Coronado National Forest boundary to New			A&Ww

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		Mexico border			
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek		A&Wc	
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine			A&Ww
UG	Chase Creek	Below the Phelps- Dodge Morenci Mine to confluence with San Francisco River			
UG	Chitty Canyon Creek	Headwaters to confluence with Salt House Creek		A&Wc	
UG	Cima Creek	Headwaters to confluence with Cave Creek		A&Wc	
UG	Cluff Reservoir #1	32°48'55"/109°50'46"	Sedimentary		A&Ww
UG	Cluff Reservoir #3	32°48'21"/109°51'46"	Sedimentary		A&Ww
UG	Coleman Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc	
UG	Dankworth Lake	32°43'13"/109°42'17"	Sedimentary	A&Wc	
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/ 109°49'03"		A&Wc	

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UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash			A&Ww
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/ 109°29'43"		A&Wc	
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek		A&Wc	
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/ 109°12'20"		A&Wc	
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River			A&Ww
UG	East Whitetail	Headwaters to terminus near San Simon River			A&Ww
UG	Emigrant Canyon	Headwaters to terminus near San Simon River			A&Ww
UG	Evans Pond #1	32°49'19"/109°51'12"	Sedimentary		A&Ww
UG	Evans Pond #2	32°49'14"/109°51'09"	Sedimentary		A&Ww

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UG	Fishhook Creek	Headwaters to confluence with the Blue River		A&Wc	
UG	Foot Creek	Headwaters to confluence with the Blue River		A&Wc	
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir		A&Wc	
UG	Frye Canyon Creek	Frye Mesa reservoir to terminus at Highline Canal.			A&Ww
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"	Igneous	A&Wc	
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek		A&Wc	
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary			A&Ww
UG	Grant Creek	Headwaters to confluence with the Blue River		A&Wc	
UG	Judd Lake	33°51'15"/109°09'35"	Sedimentary	A&Wc	
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River		A&Wc	
UG	Lanphier Canyon Creek	Headwaters to confluence with the Blue River		A&Wc	
UG	Little Blue	Headwaters to		A&Wc	

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	Creek	confluence with Dutch Blue Creek			
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek			A&Ww
UG	Little Creek	Headwaters to confluence with the San Francisco River		A&Wc	
UG	George's Tank	33°51'24"/109°08'30"	Sedimentary	A&Wc	
UG	Luna Lake	33°49'50"/109°05'06"	Sedimentary	A&Wc	
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek		A&Wc	
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash			A&Ww
UG	Markham Creek	Headwaters to confluence with the Gila River			A&Ww
UG	Pigeon Creek	Headwaters to confluence with the Blue River			A&Ww
UG	Raspberry Creek	Headwaters to confluence with the Blue River		A&Wc	
UG	Roper Lake	32°45'23"/109°42'14"	Sedimentary		A&Ww
UG	San	Headwaters to the New		A&Wc	

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	Francisco River	Mexico border			
UG	San Francisco River	New Mexico border to confluence with the Gila River			A&Ww
UG	San Simon River	Headwaters to confluence with the Gila River			
UG	Sheep Tank	32°46'14"/109°48'09"	Sedimentary		A&Ww
UG	Smith Pond	32°49'15"/109°50'36"	Sedimentary		A&Ww
UG	Squaw Creek	Headwaters to confluence with Thomas Creek		A&Wc	
UG	Stone Creek	Headwaters to confluence with the San Francisco River		A&Wc	
UG	Strayhorse Creek	Headwaters to confluence with the Blue River		A&Wc	
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek		A&Wc	
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River			A&Ww
UG	Tinny Pond	33°47'49"/109°04'27"	Sedimentary		A&Ww
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc	

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VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"			A&Ww
VR	American Gulch (EDW)	Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River			
VR	Apache Creek	Headwaters to confluence with Walnut Creek			A&Ww
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary			
VR	Aspen Creek	Headwaters to confluence with Granite Creek			A&Ww
VR	Bar Cross Tank	35°00'41"/112°05'39"			A&Ww
VR	Barrata Tank	35°02'43"/112°24'21"			A&Ww
VR	Bartlett Lake	33°49'52"/111°37'44"	Deep		A&Ww
VR	Beaver Creek	Headwaters to confluence with the Verde River			A&Ww
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake			
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall			

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		at 34°45'12"/112°06'24"			
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary			
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River			A&Ww
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/ 112°05'06"		A&Wc	
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River			A&Ww
VR	Bonita Creek	Headwaters to confluence with Ellison Creek		A&Wc	
VR	Bray Creek	Headwaters to confluence with Webber Creek		A&Wc	
VR	Camp Creek	Headwaters to confluence with the Sycamore Creek			A&Ww
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary			
VR	Chase Creek	Headwaters to confluence with the		A&Wc	

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		East Verde River				
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek			A&Wc	
VR	Coffee Creek	Headwaters to confluence with Spring Creek				A&Ww
VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary				
VR	Dead Horse Lake	34°45'08"/112°00'42"	Shallow			A&Ww
VR	Deadman Creek	Headwaters to Horseshoe Reservoir				A&Ww
VR	Del Monte Gulch	Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"				
VR	Del Monte Gulch (EDW)	City of Cottonwood WWTP outfall 002 at 34°43'57"/ 112°02'46" to confluence with Blowout Creek				
VR	Del Rio Dam Lake	34°48'55"/112°28'03"	Sedimentary			A&Ww
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek				A&Ww
VR	Dry Creek	Sedona Ventures				

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	(EDW)	WWTP outfall at 34°50'02"/ 111°52'17" to 34°48'12"/ 111°52'48"			
VR	Dude Creek	Headwaters to confluence with the East Verde River		A&Wc	
VR	East Verde River	Headwaters to confluence with Ellison Creek		A&Wc	
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River			A&Ww
VR	Ellison Creek	Headwaters to confluence with the East Verde River		A&Wc	
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River			A&Ww
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"			A&Ww
VR	Foxboro Lake	34°53'42"/111°39'55"			A&Ww
VR	Fry Lake	35°03'45"/111°48'04"			A&Ww
VR	Gap Creek	Headwaters to confluence with Government Spring		A&Wc	
VR	Gap Creek	Below Government Spring to confluence			A&Ww

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		with the Verde River			
VR	Garrett Tank	35°18'57"/112°42'20"			A&Ww
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"	Sedimentary	A&Wc	
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"	Igneous	A&Wc	
VR	Granite Basin Lake	34°37'01"/112°32'58"	Igneous	A&Wc	
VR	Granite Creek	Headwaters to Watson Lake		A&Wc	
VR	Granite Creek	Below Watson Lake to confluence with the Verde River			A&Ww
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"	Urban		
VR	Heifer Tank	35°20'27"/112°32'59"			A&Ww
VR	Hells Canyon Tank	35°04'59"/112°24'07"	Igneous		A&Ww
VR	Homestead Tank	35°21'24"/112°41'36"	Igneous		A&Ww
VR	Horse Park Tank	34°58'15"/111°36'32"			A&Ww
VR	Horseshoe Reservoir	34°00'25"/111°43'36"	Sedimentary		A&Ww
VR	Houston Creek	Headwaters to confluence with the Verde River			A&Ww

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VR	Huffer Tank	34°27'46"/111°23'11"			A&Ww
VR	J.D. Dam Lake	35°04'02"/112°01'48"	Shallow	A&Wc	
VR	Jacks Canyon	Headwaters to Big Park WWTP outfall at 34°45'46"/ 111°45'51"			
VR	Jacks Canyon (EDW)	Below Big Park WWTP outfall to confluence with Dry Beaver Creek			
VR	Lime Creek	Headwaters to Horseshoe Reservoir			A&Ww
VR	Masonry Number 2 Reservoir	35°13'32"/112°24'10"		A&Wc	
VR	McLellan Reservoir	35°13'09"/112°17'06"	Igneous		A&Ww
VR	Meath Dam Tank	35°07'52"/112°27'35"			A&Ww
VR	Mullican Place Tank	34°44'16"/111°36'10"	Igneous		A&Ww
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/ 111°44'47"		A&Wc	
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River			A&Ww
VR	Oak Creek, West Fork	Headwaters to confluence with Oak		A&Wc	

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	(OAW)	Creek			
VR	Odell Lake	34°56'5"/111°37'53"	Igneous	A&Wc	
VR	Peck's Lake	34°46'51"/112°02'01"	Shallow		A&Ww
VR	Perkins Tank	35°06'42"/112°04'12"	Shallow	A&Wc	
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/ 111°26'49"		A&Wc	
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River			A&Ww
VR	Red Creek	Headwaters to confluence with the Verde River			A&Ww
VR	Reservoir #1	35°13'5"/111°50'09"	Igneous		A&Ww
VR	Reservoir #2	35°13'17"/111°50'39"	Igneous		A&Ww
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek			A&Ww
VR	Scholze Lake	35°11'53"/112°00'37"	Igneous	A&Wc	
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/ 111°57'21"		A&Wc	
VR	Spring Creek	Below confluence with unnamed tributary to confluence with Oak Creek			A&Ww

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VR	Steel Dam Lake	35°13'36"/112°24'54"	Igneous	A&Wc	
VR	Stehr Lake	34°22'01"/111°40'02"	Sedimentary		A&Ww
VR	Stoneman Lake	34°46'47"/111°31'14"	Shallow	A&Wc	
VR	Sullivan Lake	34°51'42"/112°27'51"			A&Ww
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/ 111°57'31"		A&Wc	
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River			A&Ww
VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"			A&Ww
VR	Sycamore Creek	Headwaters to confluence with Verde River at 34°04'42"/111°42'14"			A&Ww
VR	Tangle Creek	Headwaters to confluence with Verde River			A&Ww
VR	Trinity Tank	35°27'44"/112°48'01"			A&Ww
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at '35°13'59"/ 111°48'35" to Volunteer Wash			

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VR	Verde River	From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam			A&Ww
VR	Verde River	Below Bartlett Lake Dam to Salt River			A&Ww
VR	Walnut Creek	Headwaters to confluence with Big Chino Wash			A&Ww
VR	Watson Lake	34°34'58"/112°25'26"	Igneous		A&Ww
VR	Webber Creek	Headwaters to confluence with the East Verde River		A&Wc	
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon		A&Wc	
VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River			A&Ww
VR	West Beaver Creek	Headwaters to unnamed springs at 34°41'17"/ 111°34'34"		A&Wc	
VR	West Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek			A&Ww
VR	Whitehorse Lake	35°06'59"/112°00'48"	Igneous	A&Wc	
VR	Williamson Valley Wash	Headwaters to confluence with Mint			A

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		Wash			
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream			A&Ww
VR	Williamson Valley Wash	From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash			
VR	Williscraft Tank	35°11'22"/112°35'40"			A&Ww
VR	Willow Creek	Above Willow Creek Reservoir		A&Wc	
VR	Willow Creek	Below Willow Creek Reservoir to confluence with Granite Creek			A&Ww
VR	Willow Creek Reservoir	34°36'17"/112°26'19"	Shallow		A&Ww
VR	Willow Valley Lake	34°41'08"/111°20'02"	Sedimentary		A&Ww

**History:**

Adopted effective February 18, 1992 (Supp. 92-1). Appendix B repealed, new Appendix B adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective 8/2/2016. Amended by final rulemaking at 25 A.A.R. 2515, effective 9/10/2019.

**§ 49-202. Designation of state agency**

A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, adopting, modifying or repealing rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.

B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through I of this section. Subsections C, D, G and I of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through I of this section apply to the certification of applications for or notices of coverage under those permits.

C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for WOTUS established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of WOTUS. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.

D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may

deem any additional requests for supplemental information as a denial of certification for the purposes of subsection I of this section. In all other instances, the application is complete on submission of the information requested by the department.

F. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

G. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.

H. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order to make the determination required by subsections C and D of this section. Until these rules are adopted, the department shall require an applicant to submit only the following information for certification under this section:

1. The name, address and telephone number of the applicant.
2. A description of the project to be certified, including an identification of the WOTUS in which the certified activities will occur.
3. The project location, including latitude, longitude and a legal description.
4. A United States geological service topographic map or other contour map of the project area, if available.
5. A map delineating the ordinary high watermark of WOTUS affected by the activity to be certified.
6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to WOTUS from those activities.
7. A description of the materials being discharged to or placed in WOTUS.
8. A copy of the application for a federal permit or license that is the subject of the requested certification.

I. Pursuant to title 41, chapter 6, article 10 an applicant for certification may appeal a denial of certification or any conditions imposed on certification.

Any person who is or may be adversely affected by the denial of or imposition of conditions on the certification of a nationwide or general permit may appeal that decision pursuant to title 41, chapter 6, article 10.

J. Certification under section 401 of the clean water act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:

1. There is no disposal of construction and demolition wastes and contaminated wastewater.
2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.
3. Pollution from the operation of equipment in the mining area is removed and properly disposed.
4. Stockpiles of processed materials containing ten percent or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. for the purposes of this paragraph, "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.
5. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.
6. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.

K. For the purposes of subsection J of this section, "ephemeral waters" means waters of the state that have been designated as ephemeral in rules adopted by the department.

L. Certification under section 401 of the clean water act is automatically granted for any license or permit required for:

1. Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
2. Response or remedial actions undertaken pursuant to chapter 2, article 5 of this title or pursuant to CERCLA.

3. Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).

4. Other remedial actions that have been reviewed and approved by the appropriate government authority and taken pursuant to applicable federal or state laws.

M. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental quality may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as the director's duties are prescribed in this chapter.

N. The director and the department of environmental quality may enter into an interagency contract or agreement with the director of water resources under title 11, chapter 7, article 3 to implement the provisions of section 104 of CERCLA and to carry out the purposes of subsection M of this section.

**History:**

Amended by L. 2021, ch. 88,s. 2, eff. 9/29/2021. Amended by L. 2021, ch. 325,s. 3, eff. 9/29/2021.

**§ 49-203. Powers and duties of the director and department**

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:
  - (a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.
  - (b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
  - (c) Maintenance but not construction of drainage ditches.
  - (d) Construction and maintenance of irrigation ditches.
  - (e) Maintenance of structures such as dams, dikes and levees.
4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.
5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.

7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.
9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection B shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. For services provided under the dredge and fill permit program, a state agency shall pay either:
  - (a) The fees established by the department under the dredge and fill permit program.
  - (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.
10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.

13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1, 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter

to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

9. Adopt by rule a permit program for the discharge of dredged or fill material into WOTUS for purposes of implementing the permit program established by 33 United States Code section 1344.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection B, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the

**ARS 49-203 Powers and duties of the director and department  
(Arizona Revised Statutes (2022 Edition))**

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consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

**History:**

Amended by L. 2022, ch. 204,s. 1, eff. 9/23/2022. Amended by L. 2021, ch. 325,s. 5, eff. 9/29/2021. Amended by L. 2018, ch. 280,s. 2, eff. 8/3/2018. Repealed by L. 2018, ch. 225,s. 11, eff. August 1, 2023 unless the U.S. E.P.A. approves the department of environmental quality's clean water act section 406 . Amended by L. 2018, ch. 225,s. 4, eff. 8/3/2018. Amended by L. 2018, ch. 170,s. 1, eff. 8/3/2018.

**§ 49-221. Water quality standards in general; protected surface waters list**

A. The director shall:

1. Adopt, by rule, water quality standards for all WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses. For non-wotus protected surface waters, the director shall Apply surface water quality standards established as of January 1, 2021, until specifically changed by the director pursuant to Paragraph 2 of this subsection. Rules regarding the following shall Not be adopted or applied as water quality standards for non-wotus Protected surface waters:

(a) Antidegradation.

(b) antidegradation Criteria.

(c) outstanding arizona Waters.

2. Adopt, by rule, water quality standards for Non-wotus protected surface waters, by December 31, 2022, Consistent with paragraph 1 of this subsection and as determined Necessary in the rulemaking process. In adopting those standards, The director shall consider the unique characteristics of this State's surface waters and the economic, social and Environmental costs and benefits that would result from the Adoption of a water quality standard at a particular level or for a Particular water category.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider the following:

1. The protection of the public health and the environment.

2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.
4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.
5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.
6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.
2. The uses that are being made or may be made of the reclaimed water.
3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration pursuant to title 3, chapter 3, article 4.1 of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

G. The director shall maintain and publish a protected Surface waters list. The department shall publish the initial list On the department's website and in the arizona administrative Register within thirty days after the effective date of this Amendment to this section. Not later than december 31, 2022, the Department shall adopt by rule the protected surface waters list, Including procedures for determining economic, social and Environmental costs and benefits. Publication of the list in the Arizona administrative register is an appealable agency action Pursuant to title 41, chapter 6, article 10 and may be appealed by Any party that provides evidence of an actual adverse effect that The party appealing the decision would suffer as a result of the Director's decision. All of the following apply to the Protected surface water list:

1. The protected surface waters list shall Include:

(a) All WOTUS.

(b) Any perennial, intermittent and Ephemeral reaches and any impoundments of the following rivers, not Including tributaries or reaches of waters wholly within tribal Jurisdiction or reaches of waters outside of the united States:

(i) The bill williams river, from the Confluence of the big sandy and santa maria rivers at 113°31'38.617"W, 34°18'22.373"N, To its Confluence with the colorado river at 114°8'9.854"W, 34°18'9.33"N.

(ii) The colorado river, from the Arizona-utah border at 111°32'35.741"W, 36°58'51.698"N, To the arizona-mexico border at 114° 43'12.564"W, 32°43'6.218"N.

(iii) The gila river, from the Arizona-new mexico border at 109°2'52.8"W, 32°41'11.2015"N, To the confluence with the colorado River at 114°33'28.145"W, 32°43'14.408"N.

(iv) The little colorado river, from The confluence of the east and west forks of the little colorado River at 109°28'7.131"W, 33°59'39.852"N, to its confluence with the colorado river at 111°49'4.693"W, 36°12'10.243"N.

(v) The salt river, from the Confluence of the black and white rivers at 110°13'39.5"W, 33°44'6.082"N, To the Confluence with the Gila river AT 112°18'5.704"W, 33°22'42.978"N.

(vi) The san pedro river, from the Arizona-mexico border at 110°9'1.704"W, 31°20'2.387"N, To the confluence with the gila river At 110°47'0.905"W, 32°59'5.671"N.

(vii) The santa cruz river, from its Origins in the canelo hills of southeastern arizona at 110°37'3.968"W, 31°27'39.21"N, To its Confluence with the Gila river AT 111°33'26.02"W, 32°41'39.058"N.

(viii) The verde river, from sullivan Lake at 112°28'10.588"W, 34°52'11.136"N, To its confluence with the Salt river at 111°39'48.32"W, 33°33'20.538"N.

(c) any non-wotus waters of the state That are added under paragraphs 3 and 4 of this Subsection.

2. notwithstanding paragraph 1 of this subsection, the Protected surface waters list shall not contain any of the Following non-WOTUS waters:

(a) Canals in the yuma project and Ditches, canals, pipes, impoundments and other facilities that are Operated by districts organized under Title 48, chapters 18, 19, 20, 21 and 22 and that are not used to directly deliver water for Human consumption, except when added pursuant to paragraph 4 of This subsection and in response to a written request from the owner And operator of the ditch or canal until the owner and operator Withdraws its request.

(b) irrigated areas, including fields Flooded for agricultural production.

(c) Ornamental and urban ponds and Lakes such as those owned by homeowners' associations and golf Courses, except when added pursuant to

paragraph 4 of this Subsection and in response to a written request from the owner of The ornamental or urban pond or lake until the owner withdraws its Request.

(d) swimming pools and other bodies Of water that are regulated pursuant to section 49 \_ 104, Subsection b.

(e) Livestock and wildlife water Tanks and aquaculture tanks that are not constructed within a Protected surface water.

(f) stormwater control features.

(g) Groundwater recharge, water reuse And wastewater recycling structures, including underground storage Facilities and groundwater savings facilities permitted under title 45, chapter 3.1 and detention and infiltration basins, except when Added pursuant to paragraph 4 of this subsection and in response to A written request from the owner of the groundwater recharge, water Reuse or wastewater recycling structure until the owner withdraws Its request.

(h) Water-filled depressions created As part of mining or construction activities or pits excavated to Obtain fill, sand or gravel.

(i) All waste treatment systems Components, including constructed wetlands, lagoons and treatment Ponds, such as settling or cooling ponds, designed to either convey Or retain, concentrate, settle, reduce or remove pollutants, either Actively or passively, from wastewater before discharge or to Eliminate discharge.

(j) Groundwater.

(k) Ephemeral waters except for those Prescribed in paragraph 1, subdivision (b) of This subsection.

(l) Lakes and ponds owned and managed By the united states department of defense and other surface waters Located on and that do not leave united states department of Defense property, except when added pursuant to paragraph 4 of this Subsection and in response to a written request from the united States department of defense until it withdraws its Request.

3. Unless listed in paragraph 2 of this subsection, the Director shall add the following non-wotus surface waters to the Protected surface waters list:

(a) all lakes, ponds and reservoirs That are public waters used as a drinking source, for recreational Or commercial fish consumption or for water-based

recreation such as swimming, wading and boating and other types of recreation in and on the water.

(b) Perennial waters or intermittent Waters of the state that are used as a drinking water source, including ditches and canals.

(c) Perennial or intermittent Tributaries to the bill williams river, the colorado river, the Gila river, the little colorado river, the salt river, the san Pedro river, the santa cruz river and the verde river.

(d) Perennial or intermittent public Waters used for recreational or commercial fish Consumption.

(e) perennial or intermittent public Waters used for water-based recreation such as swimming, wading, Boating and other types of recreation in and on the Water.

(f) perennial or intermittent Wetlands adjacent to waters on the protected surface waters List.

(g) perennial or intermittent waters Of the state that cross into another state, the Republic of Mexico Or the reservation of a federally recognized tribe.

4. the director may add additional non-wotus surface Waters to the protected surface waters list if all of the following Apply:

(a) the water is not required to be Listed under paragraph 1 or 3 of this subsection.

(b) the water is not excluded under Paragraph 2 of this subsection.

(c) the economic, environmental and Social benefits of adding the water outweigh the economic, Environmental and social costs of excluding the water from the List.

5. the director shall remove any erroneously listed, Non-wotus waters from the protected surface waters list when the Water is excluded under paragraph 2 of this subsection and shall Not regulate discharges to those waters in the Interim.

6. the director shall remove non-wotus waters from the Protected surface waters list when the water is not required to be Listed under paragraph 3 of this subsection and the economic, Environmental and social benefits of removing the water outweigh The economic, environmental and social costs of retaining the water On the list.

7. the director, on an emergency basis, may add a water To the protected surface waters list if the director discovers an Imminent and substantial danger to public health or welfare or the Environment, if the water would otherwise qualify to be added under Paragraph 3 of this subsection. Notwithstanding any other law, the Emergency addition shall take effect immediately on the Director's determination that describes the imminent and Substantial danger in writing. Within thirty days after the Director's determination, the department shall publish a notice Of that determination in the arizona administrative register and on The department's website. Waters added under this subsection Shall be incorporated into the protected surface waters list during The next rulemaking that follows the addition.

**History:**

Amended by L. 2021, ch. 325,s. 7, eff. 9/29/2021. Amended by L. 2018, ch. 48,s. 46, eff. 8/3/2018.

**§ 49-222. Water quality standards for WOTUS**

A. Standards for the quality of WOTUS shall assure water quality, if attainable, which provides for protecting the public health and welfare, and shall enhance the quality of water taking into consideration its use and value for public water supplies, the propagation of fish and wildlife and recreational, agricultural, industrial and other purposes including navigation.

B. The director shall adopt standards for the quality of all WOTUS that establish numeric limitations on the concentrations of each of the toxic pollutants listed by the administrator pursuant to section 307 of the clean water act (33 United States Code section 1317).

C. In setting numeric standards for the quality of WOTUS, the director may consider the effect of local water quality characteristics on the toxicity of specific pollutants and the varying sensitivities of local affected aquatic populations to such pollutants, and the extent to which the natural flow of the stream is intermittent or ephemeral, as a result of which the instream flow consists mostly of treated wastewater effluent, except that such standards shall not, in any event, be inconsistent with the clean water act. In applying such standards the director may establish appropriate mixing zones.

**History:**

Amended by L. 2021, ch. 325,s. 8, eff. 9/29/2021.

**C-7**

**SCHOOL FACILITIES BOARD**

Title 7, Chapter 6

**Amend:** R7-6-101, R7-6-205, R7-6-210, R7-6-211, R7-6-213, R7-6-215, R7-6-216, R7-6-220, R7-6-221, R7-6-227, R7-6-230, R7-6-235, R7-6-245, R7-6-246, R7-6-247, R7-6-258, R7-6-265, R7-6-270, R7-6-271, R7-6-275, R7-6-276, R7-6-301, R7-6-302, Article 5, R7-6-501, R7-6-502, R7-6-503, R7-6-504, R7-6-505, R7-6-506,

**Repeal:** R7-6-251, R7-6-260, R7-6-261, Article 6, R7-6-601



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 7, 2022

**SUBJECT: SCHOOL FACILITIES BOARD**  
Title 7, Chapter 6

**Amend:** R7-6-101, R7-6-205, R7-6-210, R7-6-211, R7-6-213, R7-6-215, R7-6-216, R7-6-220, R7-6-221, R7-6-227, R7-6-230, R7-6-235, R7-6-245, R7-6-246, R7-6-247, R7-6-258, R7-6-265, R7-6-270, R7-6-271, R7-6-275, R7-6-276, R7-6-301, R7-6-302, Article 5, R7-6-501, R7-6-502, R7-6-503, R7-6-504, R7-6-505, R7-6-506,

**Repeal:** R7-6-251, R7-6-260, R7-6-261, Article 6, R7-6-601

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### **Summary:**

This regular rulemaking from the School Facilities Board (Board) seeks to amend twenty-nine (29) rules and repeal four (4) rules in Title 7, Chapter 6, Articles 1, 2, 3, 5, and 6 related to minimum standards for school facilities and equipment. Specifically, the Board indicates its rules were made in 2001. While some of the rules were amended in 2020 through an expedited rulemaking, the Board indicates the remaining rules have become inconsistent with current industry standards and Board practice, technological changes, and best practices regarding education. The Board indicates these rules are being updated to address these issues and implement recommendations identified in a Five-Year Review Report (5YRR) approved by the Council on November 3, 2020.

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

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

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

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

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

The Board indicates it did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Board determined the following changes will have economic impact:

- R7-6-211, Classroom Fixtures and Equipment, is amended to allow electronic as well as non-electronic surfaces for classroom use. Electronic surfaces are more expensive than non-electronic surfaces. The estimated difference in cost is from \$300 to \$4,200 per surface depending on the kind chosen. A school facility requires multiple surfaces.
- R7-6-215, Classroom Air Quality, reduces the acceptable CO<sub>2</sub> level to 700 PPM above the ambient CO<sub>2</sub> level. This makes the requirement consistent with current industry standards. The Board estimates the cost of meeting this standard will be approximately \$75/unit annually.
- R7-6-221, Equipment for Learning and Technology Center, substitutes a multimedia display for a TV in the center. Depending on the kind of multimedia display chosen, the Board estimates an additional cost of \$1,920 to \$4,000 per unit.
- R7-6-235, Technology, requires a network connected multimedia device for every student rather than one device for every eight students. If each device costs approximately \$300, the cost to provide a device for each student rather than for every eight students would result in an increase of \$2,100/eight students.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The updated minimum standards are not intrusive. The minimum standards are consistent with industry standards and best practices regarding education. No alternative standards were considered.

6. **What are the economic impacts on stakeholders?**

School districts and the Board will be directly affected by, bear the costs of, and directly benefit from this rulemaking. School districts are required to ensure school facilities in the district meet the minimum standards. Because both the new school facilities and building renewal funds receive legislative appropriations, it is taxpayers who ultimately bear the costs of and directly benefit from this rulemaking.

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

The Board indicates, between the Notice of Proposed Rulemaking and the Notice of Supplemental Proposed Rulemaking, multiple Sections were added; internal citations were corrected; the name of the Board was corrected; Article 6 was repealed; and changes were made to comply with requirements of the Secretary of State.

Between the Notice of Supplemental Proposed Rulemaking and the Notice of Final Rulemaking now before the Council, in response to stakeholder feedback, the Board indicates rule R7-6-502(E)(6) was revised to retain use of the word “contingency” rather than change it to “retention.” Council staff does not believe this change constitutes a substantially different rule pursuant to A.R.S. § 41-1025.

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

The Board indicates that it received one (1) written comment from Carmen Wyckoff of the DLR Group, a copy of which is included in the final materials for the Council’s reference. The comment suggested, in rule R7-6-502(E)(6), the Board retain use of the word “contingency” rather than change it to “retention.” The Board made this revision as outlined above. The Board indicates no comments were made by persons who attended oral proceedings on June 28, 2022.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit, license, or agency authorization.

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

The Board indicates federal civil rights laws prohibiting discrimination are applicable to school facilities. The Board states the rules are not more stringent than federal law.

## **11. Conclusion**

This regular rulemaking from the Board seeks to amend twenty-nine (29) rules and repeal four (4) rules in Title 7, Chapter 6, Articles 1, 2, 3, 5, and 6 related to minimum standards for school facilities and equipment. The Board indicates its rules were made in 2001. While some of the rules were amended in 2020 through an expedited rulemaking, the Board indicates the remaining rules have become inconsistent with current industry standards and Board practice, technological changes, and best practices regarding education. The Board indicates these rules are being updated to address these issues and implement recommendations identified in a 5YRR approved by the Council on November 3, 2020.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

Douglas A. Ducey  
Governor



Andy Tobin  
Director

ARIZONA DEPARTMENT OF ADMINISTRATION  
DIVISION OF BUSINESS & FINANCE - SCHOOL FACILITIES  
100 NORTH FIFTEENTH AVENUE • SUITE 302  
PHOENIX, ARIZONA 85007  
(602) 542-6501

October 5, 2022

Ms. Nicole Sornsin, Chair  
The Governor's Regulatory Review Council  
100 North 15th Avenue, Ste. 305  
Phoenix, AZ 85007

**Re: A.A.C. Title 7. Education  
Chapter 6. School Facilities Oversight Board**

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed on June 28, 2022, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a five-year-review report approved by the Council on November 3, 2020.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is not requested.
- F. Certification regarding studies: I certify the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:

1. Cover letter signed by the Administrator;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Smith", written in a cursive style.

Jack Smith  
Administrator

**NOTICE OF FINAL RULEMAKING**  
**TITLE 7. EDUCATION**  
**CHAPTER 6. SCHOOL FACILITIES OVERSIGHT BOARD**  
**PREAMBLE**

<b><u>1. Articles, Parts, and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R7-6-101	Amend
R7-6-205	Amend
R7-6-210	Amend
R7-6-211	Amend
R7-6-213	Amend
R7-6-215	Amend
R7-6-216	Amend
R7-6-220	Amend
R7-6-221	Amend
R7-6-227	Amend
R7-6-230	Amend
R7-6-235	Amend
R7-6-245	Amend
R7-6-246	Amend
R7-6-247	Amend
R7-6-251	Repeal
R7-6-258	Amend
R7-6-260	Repeal
R7-6-261	Repeal
R7-6-265	Amend
R7-6-270	Amend
R7-6-271	Amend
R7-6-275	Amend
R7-6-276	Amend
R7-6-301	Amend
R7-6-302	Amend

Article 5	Amend
R7-6-501	Amend
R7-6-502	Amend
R7-6-503	Amend
R7-6-504	Amend
R7-6-505	Amend
R7-6-506	Amend
Article 6	Repeal
R7-6-601	Repeal

**2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 41-5702(C)(6) and 41-5711(F)

Implementing statute: A.R.S. § 41-5711(F)

**3. The effective date for the rules:**

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

**a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

Not applicable

**b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

**4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening, 27 A.A.R. 1661, October 8, 2021

Notice of Proposed Rulemaking, 27 A.A.R. 1617, October 8, 2021

Notice of Rulemaking Docket Opening, 28 A.A.R. 1154, May 27, 2022

Notice of Supplemental Proposed Rulemaking, 28 A.A.R. 1093, May 27, 2022

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Jack Smith, Administrator

Address: 100 N 15th Avenue, Suite 301

Phoenix, AZ 85007

Telephone: 602-421-1882

E-mail: [jack.smith@azdoa.gov](mailto:jack.smith@azdoa.gov)

Website: <https://sfb.az.gov>

**6. An agency's justification and reason why a rule should be made, amended, repealed , or renumbered, to include an explanation about the rulemaking:**

The Board's rules were made in 2001. Some of the rules were amended in 2020 through an expedited ruling making but no substantive changes were made at that time. As a result, the rules have become inconsistent with current industry standards and Board practice, technological changes, and best practices regarding education. The rules are being updated to address these issues and implement recommendations identified in a five-year-review report approved by the Council on November 3, 2020.

An exemption from Executive Order 2022-01 was provided for this rulemaking by Kaitlin Harrier, Director of the Governor's Office of Education, on March 8, 2022. Approval to submit the rulemaking to GRRC was provided by Ms. Harrier in an e-mail dated October 3, 2022.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The Board expects the rule amendments will have some economic impact. For example:

- R7-6-211, Classroom Fixtures and Equipment, is amended to allow electronic as well as non-electronic surfaces for classroom use. Electronic surfaces are more expensive than non-electronic surfaces. The estimated difference in cost is from \$300 to \$4,200 per surface depending on the kind chosen. A school facility requires multiple surfaces.
- R7-6-215, Classroom Air Quality, reduces the acceptable CO<sup>2</sup> level to 700 PPM above the ambient CO<sup>2</sup> level. This makes the requirement consistent with current industry standards. The Board estimates the cost of meeting this standard will be approximately \$75/unit annually.

- R7-6-221, Equipment for Learning and Technology Center, substitutes a multimedia display for a TV in the center. Depending on the kind of multimedia display chosen, the Board estimates an additional cost of \$1,920 to \$4,000 per unit.
- R7-6-235, Technology, requires a network connected multimedia device for every student rather than one device for every eight students. If each device costs approximately \$300, the cost to provide a device for each student rather than for every eight students would result in an increase of \$2,100/eight students.

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

Between the Notice of Proposed Rulemaking and the Notice of Supplemental Proposed Rulemaking, multiple Sections were added; internal citations were corrected; the name of the Board was corrected; Article 6 was repealed; and changes were made to comply with requirements of the Secretary of State.

The only change made between the Notice of Supplemental Proposed Rulemaking and the Notice of Final Rulemaking is described in item 11.

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

The Board received one written comment from Carmen Wyckoff of the DLR Group. She suggested that in R7-6-502(E)(6), the Board retain use of the word “contingency” rather than change it to “retention.” The Board appreciates the comment and made the suggested change. The change is not substantial under the terms of A.R.S. § 41-1025(B). No comments were made by persons who attended the oral proceeding on June 28, 2022.

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

Under A.R.S. § 41-5711(J), the Board is required to submit a copy of a fiscal impact statement prepared with this rulemaking for review by the Joint Committee on Capital Review. The Board provided a copy of the economic impact statement required under A.R.S. § 41-1055 to the Joint Committee on Capital Review. The Committee gave a favorable review to the economic impact statement at a meeting on September 21, 2022.

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

The Board does not issue licenses or permits.

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

Civil rights laws prohibiting discrimination are federal laws applicable to school facilities. The rules are not more stringent than federal law.

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

No analysis was submitted.

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

None

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

None of the rules in the rulemaking was previously made, amended, or repealed as an emergency rule.

**15. The full text of the rules follows:**

**TITLE 7. EDUCATION**  
**CHAPTER 6. SCHOOL FACILITIES OVERSIGHT BOARD**  
**ARTICLE 1. DEFINITIONS**

Section

R7-6-101. Definitions

**ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES**

Section

R7-6-205. School Site

R7-6-210. Classroom Square Footage

R7-6-211. Classroom Fixtures and Equipment

R7-6-213. Classroom Temperature

R7-6-215. Classroom Air Quality

R7-6-216. Measuring Classroom Comfort

R7-6-220. Learning and Technology Center

R7-6-221. Equipment for Learning and Technology Center

R7-6-227. Equipment List for Food Services

R7-6-230. Multiuse Space

R7-6-235. Technology

R7-6-245. Science Facilities

R7-6-246. Equipment List for Science Facilities

R7-6-247. Arts Facilities; Career and Technical Education Facilities

R7-6-251. ~~Alternative Delivery Method~~ Repealed

R7-6-258. Administrative Space

R7-6-260. ~~Laws and Building Codes~~ Repealed

R7-6-261. ~~Energy Saving Measures~~ Repealed

R76265. Building Systems

R7-6-270. Building Structural Soundness

R7-6-271. Exterior Envelope, Interior Surfaces and Interior Finishes

R7-6-275. Minimum Gross Square Footage

R76276. Assessment of Minimum Gross Square Footage

**ARTICLE 3. SQUARE FOOTAGE CALCULATIONS**

Section

R7-6-301. Square Footage Calculations

R76302. Modification of Square Footage for Geographic Factors

**ARTICLE 5. NEW SCHOOL FACILITY AND LAND FUNDING**

Section

R7-6-501. Capital Plans

R7-6-502. Funding for New ~~Schools~~ School Facilities or Additional Square Footage

R7-6-503. Funding for Land

R7-6-504. Donations of Real Property

R7-6-505. Constructing ~~Bond-Funded Schools~~ Bond-funded School Facilities on Land Funded by the School Facilities Board

R7-6-506. Providing Technical Assistance in the Form of Project Management

**ARTICLE 6. ~~CONTINGENCY FUNDS~~ REPEALED**

Section

R7-6-601. ~~Allocation and Use of Contingency Monies~~ Repealed

## ARTICLE 1. DEFINITIONS

### R76101. Definitions

The definitions at A.R.S. §§ ~~15-2032~~ 41-5701 and 41-5711 apply to this Chapter. Additionally, unless otherwise specified, in this Chapter:

1. “Ambient CO<sup>2</sup> level” means the carbon dioxide level of the outside air.
2. “All-weather surface” means an area for vehicular use or parking that is surfaced with asphalt, concrete, chip seal, graded and compacted gravel, or other stabilized system.
3. ~~“Board” means the School Facilities Board.~~
- 4.3. “Decibel” means a unit for expressing the relative intensity of sounds.
- 5.4. “Eligible students” has the same meaning as prescribed at A.R.S. § 15-901.
- 6.5. “Equipment” means an item not affixed to the real property of a school facility.
- 7.6. “Exterior envelope” means the exterior walls, floor, and roof of a building.
- 8.7. “Fixture” means an item affixed to the real property of a school facility.
- 9.8. “Foot-candle” means the amount of illumination the inside surface of a one-foot-radius sphere would receive from a candle 7/8 inch in diameter burning at the exact center of the sphere at 7.776 grams per hour.
- 10.9. “FTE” means full-time equivalent.
- 11.10. “General classroom” means a space that can be configured for instruction in at least the areas of language arts, mathematics, and social studies.
- 12.11. “HVAC” means a heating, ventilation, and air conditioning system. The air conditioning system may or may not be refrigerated.
- 13.12. “IEP” means individualized educational plan, a legal document required by law for each public school child who needs special education.
- 14.13. “Normal conditions” means occupancy during regular school hours while the building system is operating.
- 15.14. “PPM” means parts per million.
- 16.15. “Random sample” means arbitrary selection through a process in which each classroom in each building has an equal chance of being selected.
- 17.16. “School facility” means a building or group of buildings and outdoor area that are administered together to comprise a school campus.
- 18.17. “School site” means one or more parcels of land where a school facility is located. More than one school facility may be located on a school site.
- 19.18. “Specialty classroom” means classroom square footage specifically designed for instruction in science, physical education, career and technical education, or art.

~~20-19.~~ “Student” means an individual:

- a. Enrolled at a school facility; and
- b. In average daily membership, which is defined at A.R.S. § 15-901.

~~2+20.~~ “Student body” means the number of students at a school facility.

## **ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES**

### **R76205. School Site**

- A.** A school ~~district shall ensure a school~~ site ~~shall have~~ has safe access, parking, drainage, and security to accommodate a school facility that complies with:
1. The minimum gross square footage requirements established in A.R.S. § ~~15-2011~~ 41-5711(C), for the number of students at the school facility; and
  2. This Chapter.
- B.** A school site provides safe access by having:
1. A student drop-off area; and
  2. A pedestrian pathway that allows students to enter the school facility through a designated point of entry without crossing vehicular traffic or by crossing vehicular traffic at a designated crosswalk.
- C.** A school site provides adequate parking by having an all-weather surface area large enough to accommodate one parking space per staff FTE and one visitor parking space per 100 students. A school site that is unable to provide adequate parking may have the sufficiency of parking at the school site determined by the Board using the following criteria:
1. Availability of street parking around the school facility;
  2. Availability of any nearby parking lots;
  3. Availability of public transit;
  4. Number of staff who drive to work on a daily basis; and
  5. The average number of visitors on a daily basis.
- D.** A school site provides adequate drainage if the school site is prepared in a manner consistent with the drainage and floodplain management standards of the jurisdiction in which the school site is located.
- E.** A school site provides adequate security if:
1. ~~there~~ There is a fenced or walled, outdoor, play or physical education area for preschool ~~students~~ children with disabilities and students in kindergarten through grade six. A school site that is unable to provide adequate security may have the sufficiency of security at the school site determined by the Board using the following criteria:
    - ~~1-a.~~ Amount of vehicular traffic near the school site;

- ~~2-b.~~ Existence of hazardous or natural barriers on or near the school site;
- ~~3-c.~~ The amount of animal nuisance near the school site; and
- ~~4-d.~~ Visibility of the outdoor, play or physical education area; and
- 2. The emergency response plan required under A.R.S. § 15-341(A) has been developed.

**R7-6-210. Classroom Square Footage**

- A. A school district shall have school facilities with the following minimum cumulative classroom square footage:
  - 1. For preschool ~~students~~ children with disabilities through grade three: 32 square feet per student;
  - 2. For grades four through six: 28 square feet per student;
  - 3. For grades seven and eight: 26 square feet per student; and
  - 4. For grades nine through 12: 25 square feet per student.
- B. Classroom square footage of a school facility is measured from interior wall to interior wall of a classroom and is the space required for teaching. Both general and specialty classrooms are included in the classroom square footage of a school facility.
- C. Cumulative classroom square footage is measured as follows:
  - 1. 100 percent of the classroom square footage usable for general classroom purposes and occupied throughout a day by the same students in programs for preschool ~~students~~ children with disabilities, kindergarten, and grades one through six;
  - 2. 90 percent of the classroom square footage usable for general and specialty classroom purposes in programs for students in grades seven and eight; and
  - 3. 85 percent of the classroom square footage usable for general and specialty classroom purposes in programs for students in grades nine through 12.
- D. Classroom square footage includes space allocated for any of the following purposes:
  - 1. Garment storage,
  - 2. Supply storage,
  - 3. Work counter; and
  - 4. Teacher or student collaboration.
- ~~E. An exterior space may be included in the classroom square footage of a school facility if the exterior space is covered and meets all other standards in this Chapter.~~

**R76211. Classroom Fixtures and Equipment**

Each general and specialty classroom shall:

1. Contain a work surface and seat for each student, teacher, and other individual regularly assigned to the classroom. The work surface and seat shall be:
  - a. Appropriate for the normal activity of the class conducted in the room, and
  - b. Capable of being moved into different configurations;
2. Have at least one or more, non-electronic or electronic, mounted or retractable, ~~surfaces~~ surface, at least three feet by five feet, which ~~fulfill~~ fulfills all of the following purposes:
  - a. Is erasable,
  - b. Is suitable for projection, and
  - c. Is suitable for display;
3. Have storage for classroom materials or conveniently accessible storage; and
4. Have secure storage for student records or conveniently accessible secure storage. Student records may be stored electronically.

**R76213. Classroom Temperature**

- ~~A.~~ A school facility shall have an HVAC or other system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom.
- ~~B.~~ ~~Except in areas where the elevation is above 5,000 feet, defective or non-operable air conditioners and evaporative coolers shall be replaced with air conditioning. Non-air conditioned schools with elevations less than 5,000 feet shall be air conditioned.~~

**R76215. Classroom Air Quality**

The CO<sup>2</sup> level in each general and specialty classroom shall not exceed ~~800~~ 700 PPM above the ambient CO<sup>2</sup> level.

**R7-6-216. Measuring Classroom Comfort**

To determine whether a school facility complies with the standards in R7-6-212 through R7-6-215:

1. Classroom lighting, temperature, acoustics, and air quality shall be measured at a work surface in the approximate center of a classroom under normal conditions; and
2. Measuring shall be performed for a random sample of 10 percent of the general, science, and art classrooms in each building of the school facility; ~~and~~
3. ~~All portable or modular buildings manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-220. Learning and Technology Center**

- A. A school facility shall have a learning and technology center with space for students to access electronic and hard-copy research and reading materials. The learning and technology center shall include space for reading, listening, and viewing materials.
- B. For an elementary school facility ~~that serves at least 150 students~~, the learning and technology center shall have space equal to the ~~greater~~ lesser of 1000 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.
- C. For a middle or junior high or high school facility that serves at least 150 students, the learning and technology center shall have space equal to the ~~greater~~ lesser of 1200 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.

**R7-6-221. Equipment for Learning and Technology Center**

- A. The learning and technology center of a school facility shall contain the following minimum equipment:
  - ~~1. One linear foot of book shelf space per student;~~
  - ~~2.1. For a school facility of 150 or more students, one~~ One work surface and seat for every 20 students, minimum of 15, maximum of 75;
  - ~~3.2. One TV~~ multimedia display;
  - ~~4.3. Projection equipment and projection surface;~~
  - ~~5.4. Ten books per student; and~~
  - ~~6.5. An electronic or hard copy of each of the following:~~
    - a. Almanac,
    - b. Encyclopedia,
    - c. Atlas, and
    - d. Unabridged dictionary.
- B. If a hard-copy almanac, encyclopedia, or atlas is used, each shall have a publication date of ~~2000~~ 2015 or later.

**R7-6-227. Equipment List for Food Service**

- A. A school facility that receives, stores, prepares, and serves food to students shall have the following fixtures and equipment:
  - 1. One three-compartment sink,
  - 2. One double-stack oven or a warming oven,

3. One dishwasher if reusable dishes and silverware are used,
4. One hot-food holding appliance,
5. One range with hood,
6. One refrigerator,
7. One freezer, and
8. One milk refrigerator.

**B.** An alternative may be substituted for any item in subsection (A) if the alternative enables the school facility to receive, store, prepare, and serve food to students.

**C.** A school facility that receives, stores, and serves food prepared off the school site may ~~adjust~~ substitute equipment required for a warming kitchen for the items in subsection (A) ~~accordingly~~.

### **R7-6-230. Multiuse Space**

A school facility shall have a space capable of being used for student assembly. The space shall be:

1. Large enough to accommodate one-third of the student body, and
2. The same size or larger than an average classroom at the school facility, ~~and~~
3. ~~At least seven square feet multiplied by one-third of the student body in addition to the square footage of open aisle and exiting path space.~~

### **R76235. Technology**

A school facility shall provide at least one network connected multimedia device, ~~available for student use~~, for every ~~eight students~~ student. A multimedia device is a computer, tablet, or other smart device with internet access capable of presenting multimedia content.

### **R76245. Science Facilities**

**A.** A school facility with students in grades five through 12 shall have classroom square footage for delivery of practical instruction in science.

1. For grades five through eight, no classroom square footage is required other than as specified in R7-6-210.
2. For grades nine through 12, four square feet per student is required for practical instruction in science. The space shall not be smaller than the average classroom at the facility and may be used for other instruction when not needed for practical instruction in science.

- ~~B. Except as specified in R7-6-251, a~~ A school facility with students in grades five through 12 shall have the science fixtures and equipment specified in R7-6-246 for delivery of practical instruction in science.

**R7-6-246. Equipment List for Science Facilities**

- A. ~~Science facilities for~~ A school facility with students in grades nine through 12 shall have the following science-facility fixtures and equipment:
1. One demonstration table with non-corrosive surface per 250 students;
  2. Six laboratory stations with a non-corrosive surface per 250 students;
  3. One fume hood;
  4. One chemical storage unit per 1,000 students;
  5. One eyewash or safety shower station per 250 students;
  6. Access to one ~~dissecting~~ microscope per 25 students, minimum of 12 microscopes or the number equal to one-half the number of students in grades nine through 12 divided by 25, whichever is fewer; and
  7. One refrigerator.
- B. ~~Science facilities for~~ A school facility with students in grades five through 12 shall have the following science-facility fixtures and equipment:
1. One sink per 250 students;
  2. Access to one ~~compound~~ microscope per 25 students, minimum of 12 microscopes or the number equal to one-half the number of students in grades five through 12 divided by 25, whichever is fewer; and
  3. One balance per 250 students.

**R7-6-247. Arts Facilities; Career and Technical Education Facilities**

- A. ~~Except as specified in R7-6-251, a~~ A school facility with students in grades seven through 12 shall have space to deliver art education programs, including visual, music, and performing arts, and career and technical education programs.
- B. A school facility with students in grades seven through 12 shall have four square feet per student of space for art education and/or career and technical education. The space shall not be smaller than the average classroom at the facility and may be used for other instruction when not needed for instruction in the arts or career and technical education.

- C. A school facility with students in kindergarten through sixth grade may deliver art education in the classroom square footage specified in R7-6-210. Education in performing arts may be delivered to students in kindergarten through sixth grade in spaces such as a multiuse space, gymnasium, or cafeteria ~~if the spaces have appropriate acoustical treatment.~~

**R7-6-251. ~~Alternative Delivery Method Repealed~~**

~~A school district may use an alternative method to deliver instruction in art, science, or career and technical education. Before an alternative method is used, the school district shall:~~

- ~~1. Have the school district governing board determine the alternative method is capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject; and~~
- ~~2. Approve use of the alternative method.~~

**R76258. Administrative Space**

- A. A school facility shall have space for use by the administration of the school facility. For the school administrator, 150 designated square feet is required. For general administrative purposes, a space between 150 square feet and 1.5 square feet per student, as reasonable for the size of the anticipated student body, is required. ~~The maximum may be exceeded.~~
- B. A school facility shall have a dedicated space in which to isolate a sick student from the other students. This space shall be accessible to a restroom and large enough to accommodate one cot per 200 students, with a maximum of four cots.
- C. A school facility shall have work space available to the faculty that is in addition to any work space in or near a classroom. A space between 150 square feet and one square foot per student, as reasonable for the size of the anticipated student body, is required. The faculty work space may be in multiple locations throughout the school facility and may have more than one function.

**R76260. ~~Laws and Building Codes Repealed~~**

- ~~A. To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Existing school buildings are not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the building or fire code of the jurisdiction where the building is located.~~

~~B. At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.~~

#### **R7-6-261. Energy Saving Measures Repealed**

~~Both construction of a new school facility and renewal of an existing school facility shall include energy conservation measures that will provide dollar savings in excess of the cost of the conservation measure within eight years of the construction or renewal.~~

#### **R76265. Building Systems**

A. As required under A.R.S. § ~~15-2011(B)(3)~~ 41-5702(L), building systems in a school facility shall be in working order and ~~capable of being~~ properly maintained. A building system is considered to be in working order and ~~capable of being~~ maintained if:

1. The system is ~~capable of being~~ operated as intended;
2. The system is ~~capable of being~~ maintained according to manufacturer's instructions;
3. Newly manufactured or refurbished replacement parts are available;
- ~~4. The remaining life expectancy of the system is at least three years;~~
- ~~5.4.~~ 4. The system is ~~capable of supporting~~ supports the gross square footage of the school facility; and
- ~~6.5.~~ 5. Components of the system present no imminent danger of personal injury.

B. Building systems required under A.R.S. § ~~15-2011(B)(3)~~ 41-5702(L) to be in working order and ~~capable of being~~ maintained include but are not limited to: roof, plumbing, telephone, electrical, and HVAC systems. Additionally, under this Chapter, ~~the following~~ building systems including but not limited to the following shall be in working order and ~~capable of being~~ properly maintained: fire alarm, two-way internal communication, network cabling, and security systems.

#### **R76270. Building Structural Soundness**

As required under A.R.S. § ~~15-2011(B)(4)~~ 41-5711(B)(4), all buildings of a school facility shall be structurally sound. A building of a school facility is considered structurally sound if the building passes a structural assessment performed by a professional engineer.

- ~~1. Presents no imminent danger of personal harm;~~
- ~~2. Has no visible signs of major decay or distress, and~~
- ~~3. Appears to have at least three years of remaining life expectancy.~~

**R76271. Exterior Envelope, Interior Surfaces, and Interior Finishes**

The exterior envelope, interior surfaces, and interior finishes of a school facility shall be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are constructed of materials requiring minimal maintenance, including painting;
  - b. Walls, roof, doors, and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, ~~for at least three years.~~
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, ~~for at least three years.~~

**R76275. Minimum Gross Square Footage**

Each school district shall have sufficient school facilities, which comply with minimum school facility guidelines established in this Article, to meet the ~~per pupil~~ minimum adequate gross square footage requirements for ~~such the~~ district as determined by law, ~~for such district based on number and grade distribution of the students served by the district.~~

**R76276. Assessment of Minimum Gross Square Footage**

- A. Computation of the gross square footage of a school facility may be by ~~physical measure~~ measurement or by calculation based on architectural plan documents.
- B. The gross square footage of a school facility equals all space within the facility excluding space used for district administrative purposes.

- C. The gross square footage of a district shall equal the sum of the gross square footage of each school facility in the district.
- D. The minimum gross square footage of a district equals the sum of the products of the students in each grade or program for preschool children with disabilities or kindergarten ~~program~~ multiplied by the minimum adequate gross square footage requirements per ~~pupil~~ student, applicable to the district for such grade or program.
- E. For the purpose of assessment of minimum gross square footage, the number of ~~children~~ students in all grades and kindergarten shall be evenly distributed across all grades and kindergarten served by the district.

### ARTICLE 3. SQUARE FOOTAGE CALCULATIONS

#### **R76301. Square Footage Calculations**

- A. A school district may use Class A bonds to supplement any project funded by the ~~School Facilities~~ Board pursuant to ~~under~~ A.R.S. § 15-2021 or A.R.S. § 15-2041 41-5741. Pursuant to ~~Under~~ A.R.S. § 5-2002(H) 41-5702(H), when a school district adds square footage to the district through the construction of a new school facility using Class A bonds, the ~~School Facilities~~ Board shall not provide funding to supplement ~~construction of the new school~~ construction facility.
- B. When a school district adds square footage to the district through the construction of a new school facility using ~~either~~ Class B bonds; or ~~unrestricted capital outlay monies~~ other funds, the ~~School Facilities~~ Board shall not include the square footage of the new school facility in the ~~gross net~~ square footage of the school district for ~~purposes of calculating building renewal distributions pursuant to A.R.S. § 15-2031 and for~~ determining ~~needs~~ need for additional square footage pursuant to ~~under~~ A.R.S. §§ 15-2011 41-5711 and A.R.S. § 15-2041 41-5741.
- C. When a school district adds square footage to the district through the construction of a new school facility using Class A bonds, the ~~School Facilities~~ Board shall include the square footage of the new school facility in the ~~gross net~~ square footage of the school district for ~~purposes of calculating building renewal distributions pursuant to A.R.S. § 15-2031 and for~~ determining ~~needs~~ need for additional square footage pursuant to ~~under~~ A.R.S. §§ 15-2011 41-5711 and A.R.S. § 15-2041 41-5741.
- D. ~~A~~ If a school district ~~that~~ uses Class B bonds and/or ~~unrestricted capital outlay monies~~ other funds to add or replace square footage at existing ~~schools~~ school facilities, the ~~Board~~ shall ~~have~~ treat the additional square footage or replacement square footage ~~treated~~ as follows:
  1. ~~A school district that adds~~ If square footage is added to an existing school facility ~~with the use of~~ using Class B bonds or ~~unrestricted capital outlay monies~~ shall not have other funds, the ~~Board~~

~~will not include~~ the additional square footage ~~included in the determination of~~ determining minimum adequate square footage ~~pursuant to~~ under A.R.S. § ~~15-2011(C)~~ 41-5711(C), but the School Facilities Board ~~shall consider~~ will include the additional square footage ~~for purposes of~~ in determining adequacy of the functional components of the school facility as specified in ~~the~~ Minimum School Facilities Guidelines set forth in R7-6-201 through R7-6-285 Article 2.

- 2: A school district that both removes and adds square footage with the use of Class B bonds or ~~unrestricted capital outlay monies~~ shall not have the net additional square footage, ~~included in the determination of minimum adequate square footage pursuant to A.R.S. § 15-2011(C)~~, but the School Facilities Board shall consider the net additional square footage for purposes of ~~determining adequacy of the functional components of the school as specified in the Minimum School Facilities Guidelines set forth in R7-6-201 through R7-6-285~~.
  - 3: For purposes of calculating building renewal pursuant to A.R.S. § 15-2031, replacement square footage constructed with Class B bonds or ~~unrestricted capital outlay monies~~ shall be included, ~~but net additional square footage shall be excluded~~.
  - 4.2. If ~~a portion of the square footage is replaced~~ at an existing school facility is replaced with the use of using Class B bonds or ~~unrestricted capital outlay monies~~ other funds, the Board will determine the student capacity of the completed school facility ~~after completion of the project will be determined~~ in the same manner as it student capacity would have been determined ~~prior to~~ before the addition replacement. If Class B bonds or ~~unrestricted capital outlay monies~~ other funds are used to construct a complete replacement school facility, the Board will determine the student capacity of the completed school facility ~~once the project is completed will be based on the provisions of A.R.S. § 15-2011(C)~~ 41-5711(C).
  - 5.3. For purposes of this Section, replacement square footage ~~is defined as~~ means square footage constructed with Class B bonds or ~~unrestricted capital outlay monies~~ other funds that replaces existing square footage.
- E. If square footage is added to or replaced at an existing school facility ~~with the use of~~ using Class A bonds, the school district shall determine the student capacity of the facility after ~~completion of the project is completed using~~ will be determined in the same ~~manner as it~~ procedure the school district would have ~~been determined prior to~~ used before the addition or replacement.
- F. ~~The method of computing the funding and square footage for any expansion of a core facility previously funded by the School Facilities Board shall follow the same method that was used for computing the original core facility.~~

**R76302. Modification of Square Footage for Geographic Factors**

- A. The Board shall provide additional school facility square footage to a school district that has 100 or more students who: ~~In those school districts where students are~~
1. Are transported one hour or more via using the most reasonable and direct route; or where ~~students reside~~
  2. Live 45 miles or more from the closest school via using the most reasonable and direct route; and ~~where 100 or more students are affected by these conditions within the same region, the School Facilities Board shall provide additional school space to the district to accommodate the educational needs of the affected students.~~
- B. ~~However, the educational space provided may be modified as~~ If the Board provides additional school facility square footage under subsection (A), the Board shall make ~~sees fit in making~~ a conscientious effort to meet the Minimum Adequacy Guidelines without requiring an ~~extraordinary expenditures~~ expenditure of public funds.
- ~~B.C.~~ If an elementary school district that is not in a high school district unifies after June 30, 2005, the resulting unified school district may qualify for high school ~~space~~ square footage under A.R.S. § ~~15-2041~~ 41-5741 if it meets the following criteria:
- ~~1.~~ The elementary school district unifies after June 30, 2005; and
  - ~~2.1.~~ The resulting unified school district is projected to have more than 350 resident high school students being served in by one or more school districts other than the student's students' resident school district within three years following the current fiscal year; and
  - ~~3.2.~~ One of the following is true:
    - a. At least 350 of the high school students in the unified school district would travel 20 miles or more to ~~the a~~ receiving high school facility; or
    - b. The receiving high school district is projected to need additional high school ~~space~~ square footage within seven years. For purposes of this analysis, the projected average daily membership of the receiving high school district includes the high school students of both the receiving and sending school districts.

**ARTICLE 5. NEW SCHOOL FACILITY AND LAND FUNDING**

**R76501. Capital Plans**

If a school district's capital plan, developed ~~pursuant to~~ under A.R.S. § ~~15-2041~~ 41-5741, indicates ~~a the~~ the school district will need ~~for~~ a new school facility or an addition to an existing school facility within the next four years or ~~a need for~~ land within the next ~~ten~~ 10 years, the school district shall complete the

capital plan packet issued by the ~~School Facilities~~ Board and return the completed packet to the Board by the ~~announced~~ deadline prescribed under A.R.S. §41-5741.

**R7-6-502. Funding for New ~~Schools~~ School Facilities or Additional Square Footage**

- A. The Board shall prepare a New Construction Analysis for a school district that requests funding for additional square footage under the capital plan submitted under R7-6-501. The Board shall review ~~The~~ the data submitted by ~~each~~ the school district ~~requesting additional square footage under the capital plan shall be reviewed by staff to determine student capacity of the school district. :~~ Additionally, staff shall review and verify district student population projections, and ~~the~~ existing square footage in the district. ~~The staff shall prepare a New Construction Analysis for the district.~~ Board shall provide a copy of the New Construction Analysis to the applicable school district.
- B. ~~If the proposed~~ a school district proposes to locate a new school ~~facilities are located~~ facility in territory in the vicinity of ~~a military~~ an airport, as defined in A.R.S. § 28-8461, the Board shall provide notice to the ~~military~~ airport of the proposed new school facility ~~construction~~ and seek ~~the military airports~~ comments and analysis concerning whether the high noise or accident potential associated with airport operations is ~~compatibility of~~ compatible with the proposed school ~~facilities~~ facility ~~with the high noise or accident potential generated by military airport operations that may have an adverse effect on~~ and public health and safety. The Board shall consider ~~and analyze~~ the comments and analysis provided by the ~~military~~ airport ~~prior to making a final determination before deciding whether~~ to fund the new ~~square footage~~ school facility.
- C. At an open meeting and after reviewing the New Construction Analysis prepared under subsection (A) and hearing from members of the applicable school district, ~~The~~ the Board shall ~~make a decision regarding~~ decide the number of square feet and students to be funded for the district, the ~~appropriate~~ cost funding per square foot approved by the legislature, and the total budget based on the funding per square foot. ~~At the time the Board is making its decision, the New Construction Analysis shall be available to the Board members and the school district. The school district may address the Board at this time.~~
- D. ~~A school district that is approved for additional square footage shall have 60 days from the date of notification to officially accept, in writing, funding for the square footage approved by the Board or the approval shall expire. After a school district has accepted a project in writing and has signed~~ signs the Terms and Conditions for New School Funding, the Board ~~shall provide~~ may make five percent of the ~~monies~~ funds approved available for architectural and engineering fees ~~for projects of \$500,000 or~~

~~more.~~ The ~~individual~~ school district ~~shall be~~ is responsible for ~~establishing~~ deciding the actual ~~A and~~ E amount spent on architectural and engineering fees.

E. A school district that ~~receives approval~~ is approved for funding for additional square footage ~~from the Board~~ shall proceed with the design development plan and specifications for the project. ~~Two~~ The school district shall submit to the Board one or more copies of the proposed ~~educational goals or drawings, specifications, and schematic design, with and budget estimates are required to be submitted to the Board's staff.~~ The school district shall ensure items required to be included in the estimated budget are all elements of new construction, excluding land acquisition, are included in the estimated budget. These elements include, but are not limited to:

1. Architectural and engineering fees;
2. ~~Survey~~ Surveying, testing, obtaining permits, advertising, and printing;
3. Construction costs;
4. Furniture, fixtures, and equipment;
5. Any necessary project management; and
6. A ~~five~~ three percent contingency amount to ensure the completed project meets all Minimum Adequacy Guidelines. ~~After Board staff review, the school district shall proceed with a preliminary bid package.~~

F. ~~If the school district includes reasonable upgrades to the new construction project for energy conservation purposes, the Board shall provide funding upgrades above the formula based award to cover the full amount of the upgrade. Upgrades will only be funded if the upgrade receives pre-approval by the Board staff and the school district architect or engineer certifies that the upgrade will provide dollar savings in excess of the cost of the upgrade within an eight-year period.~~

~~G.F.~~ Upon review of the submitted schematic design, budget estimates and preliminary bid package, ~~the Board's~~ After reviewing the materials submitted under subsection (E), the Board staff shall ~~make a recommendation to the Board regarding the appropriateness of~~ decide whether to authorize the school district to proceed with construction of the additional square footage ~~and the efficiency and effectiveness of the plan.~~ The ~~staff recommendation shall be based~~ Board shall base the decision on whether the project is within the original scope and Board ~~approved budget (including square footage and number of students)~~ approval, the project meets the ~~building adequacy standards~~ Minimum Adequacy Guidelines, initial comments from the local building authority and whether revised student population projections continue to justify the additional square footage. If the Board ~~approves the project, authorizes~~ the school district ~~shall be authorized~~ to proceed, with the final bid package school district may initiate construction. ~~Prior to authorization to contract the school district shall document that it has obtained local (city, county or equivalent) building department approval. For projects~~ If the

Board determines a project is outside of the original scope and /or Board approved budget approval or that do does not meet the minimum adequacy guidelines Minimum Adequacy Guidelines, the Board may instruct the school district to resubmit the project, under subsection (E) or ~~the Board may~~ make an alternative decision. ~~Local~~ Other funds may be used by the school district in conjunction with the Board approved funding.

- ~~H.~~ Upon receipt of bids by the school district, ~~the Executive Director shall authorize the district to proceed with the contract if the school district has documented that it has obtained local (city, county or equivalent) building department approval, and the bid is within the original scope and Board approved budget, and meets the building adequacy standards. The Executive Director may make an alternative recommendation to the full Board.~~
- ~~I.~~ The Board-approved funding for additional square footage shall be available to the school district for one year from the date of notification. The bid process shall be completed within the one-year period. The Board shall consider requests for an extension beyond the one year and may grant an extension for good reason.
- ~~J.G.~~ The Board may modify or waive the requirements of this Section for good cause.

#### **R7-6-503. Funding for Land**

- A.** A school district that is approved for funding of a new school facility under R7-6-502, may ask the Board to provide funding to purchase land on which to locate the new school facility.
- B.** The School Facilities Board follows a three-step approval process, as described in subsections (C) through (E), before recommending whether to authorize for the funding of to purchase land that is classified as Step One - Justification of Need for Land; Step Two - Request to Purchase a Specific Site; and Step Three - Due Diligence for construction of a new school facility. The executive director Director may deviate from the three-step approval process to meet other circumstances as they arise, such as purchasing state-owned or condemned land, and condemnation and The Director shall bring such recommendations a recommendation regarding funding to purchase land to the full Board.
- B.C.** Step One, is the initial request justification of the need for land for new construction of a new school facility.: ~~A~~ If a school district that currently owns land, the school district shall demonstrate include in the justification;
  - 1. A list of all land parcels currently owned by the school district;
  - 2. The size and location of each district-owned land parcel; and
  - 3. Why the each district-owned property land parcel is not suitable for the needed new school facility in order for the school district to receive funding for the acquisition of land.

~~C.D.~~ Step Two, includes the following request to purchase a specific land site:

1. ~~The~~ A school district that requests to purchase a specific land site for construction of a new school facility shall provide the following to the Board:
  - a. ~~a~~ A map of the school district showing current ~~schools~~ school facilities and, for each school facility, the projected student population, grade levels served, and attendance boundaries ~~in various locations in the district, which supports the location of the new school at the requested site.~~ The school district shall also provide a listing of vacant parcels currently owned by the school district, (including the size of each parcel and its location);
  - b. ~~describe~~ A description the land site selection process;
  - c. ~~explain why~~ An explanation of why the land site requested was chosen over alternative sites;
  - d. ~~and summarize~~ A summary of any joint-use joint-use provisions or other intergovernmental agreements related to the land site requested; ~~and. The school district shall also provide a~~
  - e. The legal description, size, and estimated cost of the desired requested land site, the size of the site and an estimate of the cost of the site. The school district may provide information on more than one site. If the size of the requested land site is outside the range of acreage table approved by the Board, the school district shall justify the deviation.
2. The Board shall ~~make a decision regarding the site size for each site. The range of acreage table approved by the Board is provided to allow school districts some leeway in site selection. The school district shall provide special justification if the site size is not within the range shown on the range of acreage table. Allowances shall not be granted for additional acreage for limited use activities that are only remotely related to the teaching and learning enterprise. Limited use activities would include, but not be limited to, athletic fields that are only used for interscholastic competition rather than daily activities, and non-school related community functions. The site size will be based on the eventual size of the school, if expansion is planned. The school district may request a larger or smaller site if conditions require. The school district may purchase additional acres with local funds. School districts should give careful consideration to joint-use sites such as those which adjoin community parks and play grounds. The ranges indicated are not intended to dictate a minimum acreage if a joint-use agreement provides the school with access to adjoining public space~~ review the information submitted under subsection (D)(1) and either authorize or deny authorization for the school district to proceed to perform due diligence regarding the land site the school district proposes to purchase.

~~3-E.~~ Step Three, due diligence regarding the specific land site:

1. ~~If a~~ A school district that needs monies funds to verify, gather, and submit the information required ~~in Step Three, the school district~~ under subsection (E)(2) shall submit a cost estimate to

the Board; and the Board shall approve or disapprove the request ~~for monies to a maximum of \$30,000. The Board shall deduct any funds advanced to a school district to verify, gather, and submit the information required under subsection (E)(2) from the final amount authorized, if any.~~ Rather than allocating ~~monies funds to a~~ the school district to verify, gather, and submit information required ~~in Step Three under subsection (E)(2),~~ the Board may ~~approve the staff of the School Facilities Board to contract and pay~~ directly for ~~such the~~ services, ~~in which case the contractors will be paid directly by the Board.~~

~~D.2.~~ If the A school district ~~receives approval~~ authorized under subsection (D)(2) to ~~proceed to Step Three,~~ the following information ~~about~~ perform due diligence regarding the land site shall be acquired the school district proposes to purchase shall submit the following information to the Board:

~~1.a. An appraisal~~ Two appraisals of the land that ~~documents that~~ show the proposed cost of the land site is at or below the fair market value;

~~2.b.~~ Legal description of the land: site;

~~3.c. Level~~ Phase one environmental assessment completed within the last 180 days, plus the following factors (if not included):

~~a.i.~~ Hazardous materials;

~~b.ii.~~ Archaeology;

~~e.iii.~~ Endangered flora and fauna;

~~d.iv.~~ Noise;

~~e.v.~~ Soil Conditions conditions, and

~~f.vi. Adjacent~~ Identity of adjacent land owners and/or uses;

~~4.d. Boundary~~ American Land Title Association and Topographical Survey topographical survey;

~~5.e.~~ Drainage statement;

~~6.f. Site~~ Estimate of land-site development cost;

~~7.g.~~ Photographic survey (if required by applicable planning and zoning departments); and

~~8.h. Feasibility site~~ Site feasibility diagram-conceptual study developed by a design professional illustrating that shows the proposed development of the land site (based on the eventual size of the school, if there are plans for expansion), indicating. The site feasibility diagram shall include:

~~a.i.~~ Property lines and measurements;

~~b.ii.~~ Setbacks, right-of-ways, and easements;

~~e.iii.~~ Vehicular access and parking;

~~d.iv.~~ Pedestrian and bicycle access;

~~e.v.~~ Building zone;

~~f.vi.~~ Drainage concept;

- ~~g~~.vii. Utility routes or systems;
- ~~h~~.viii. Activity fields and courts;
- ~~i~~.ix. Limit-lines and calculation of usable area;
- ~~j~~.x. Existing features to be demolished or preserved; and
- ~~k~~.xi. Future expansion capability.

3. After reviewing the information provided by the school district under subsection (E)(2), the Board shall prepare a recommendation for the Division regarding whether to authorize purchase of the requested land site. The Board shall include in the recommendation the cost of the land site and applicable closing costs.
4. If the Division decides to authorize purchase of the requested land site, the Division shall request a funding appropriation from the legislature.

~~E.F.~~ Final distribution. ~~Final distribution of monies to purchase the site may be made by the Board if Step Three reveals no serious problem with the site. If the actual cost of the site does not exceed the Board approved amount, the Executive Director may make the final determination of site funding without further action by the Board. If monies were distributed to the school district to verify, gather and submit the information required based on a cost estimate, an adjustment for the actual cost shall be made at the time of the final distribution. If the legislature appropriates funding for purchase of the requested land site, the school district shall submit a written funding request to the Division. The Director shall make final distribution of funds to the school district.~~

**G.** Additional matters.

1. ~~The~~ A school district that receives funds under subsection (E)(1) shall provide documentation to the Board of the actual expenditures from the monies provided and the actual closing costs funds within 60 days of after the final distribution.
2. A school district that receives funding under subsection (F) shall provide documentation to the Board of actual closing costs after the final distribution. Expenditures exceeding the amount provided pursuant to subsection (C)(3) of this Section require approval by the Board.
3. If the site is rejected as a result of information gathered in Step Three completion of due diligence reveals a serious problem with the proposed site or if the actual cost of the requested site exceeds the amount approved by the Board, the school district may repeat Steps Two and Three with the three-step process for a new site.

~~F.H.~~ The Board may modify or waive the requirements of this Section for good cause.

#### **R7-6-504. Donations of Real Property**

- A. ~~A~~ If a school district wishes to receive funding to enable the school district seeking to acquire accept a donation of real property, by donation pursuant to as authorized under A.R.S. § 15-2041 41-5741, the school district shall complete and submit to the Board a the school site and school facility donation information requirements form and submit the form to the School Facilities Board that is available on the Board's website and provide information regarding the real property to be donated. The information requested on the form for land shall include, among other items, a district map identifying existing school sites and facilities, student population and the location of the donation. The information requested on the form for a facility shall include, among other items, the size of the facility, grade levels served and location. If all of the information required is not available the school district lacks some of the required information and if a school district needs monies funds to verify, gather, and submit the missing information required, it the school board shall submit a cost estimate request for the estimated amount to obtain the missing information at the same time it the school board submits the available information that is available.
- B. ~~If all information is available, the School Facilities Board staff shall analyze the request to accept the donation and make a recommendation to the Board. If all information is not available, the School Facilities Board staff shall analyze the request on the basis of whether the school district should be awarded the funds necessary to complete the information gathering process, and shall make a recommendation to the Board.~~
- B. At an open meeting and after reviewing the information submitted under subsection (A) and hearing from members of the applicable school district, At the time the Board is making its shall make a decision regarding funding to accept the donation of real property, the staff analysis and recommendation shall be available to the School Facilities Before the meeting, the analysis and recommendation of the Board shall be available to Board members and the applicant school district. The applicant school district may address the Board.
- C. ~~If the Board approval is to award approves awarding the school district funds necessary to complete the obtain all required information gathering process, the district shall be notified by the Board Staff shall notify the school district, and upon acceptance If the school district accepts the award, the school district may proceed to gather the additional required information required. Once When the additional required information is submitted to the Board, the Staff Board shall analyze the request to accept the donation and make a recommendation to the Board as stated in subsection (B) follow the procedures in subsection (B).~~

- D. If the Board approves funding to enable a the school district ~~request~~ to accept ~~the a~~ donation of real property, the Board ~~staff~~ shall notify the school district. ~~The distribution of 20 percent of the value of the accepted donation pursuant to A.R.S. § 15-2041 shall be awarded to the school district upon notification to the Board that the donation has been accepted by the district. The school district shall submit to the Board documentation of its that the governing board action accepted donation of the real property and documentation that the property title has been was transferred to the school district. Upon receipt of~~ When this documentation is received, the Board ~~staff~~ shall ~~be authorized~~ direct the Division, under A.R.S. § 41-5741(F), to distribute the approved to the school district 20 percent amount of the fair-market value of the portion of donated property usable for academic purposes.
- E. If ~~monies~~ funds were distributed to ~~the a school~~ district to ~~verify, gather and submit the information required based on an estimated cost,~~ under subsection (C) the Board shall make an adjustment for the actual cost shall be made at the time of the final distribution. The school district shall provide documentation to the Board of the actual expenditures from the monies funds provided. Expenditures An expenditure exceeding any amounts provided pursuant to R7-6-503(C)(3) shall require \$30,000 requires advance approval by the Board.
- F. ~~In determining~~ In conducting the analysis under subsection (B) to determine whether the real property proposed for donation is at an appropriate as a school facility site or a school facility, the ~~School Facilities-Board Staff analysis shall be based on~~ consider the following:
1. Location of the real property proposed for donation ~~of real property~~;
  2. ~~District needs~~ School district need for additional square footage to accommodate student capacity;
  3. ~~District needs~~ School district need for additional land ~~(for site donations only):~~ for a school facility;
  4. Usable acres in the proposed ~~for~~ donation, taking into consideration the School Facilities Board Board's adopted usable approved range of acreage requirements. table;
  5. ~~The ability of a~~ Whether the proposed site donation ~~to can~~ can accommodate a school facility that meets the minimum adequacy guidelines ~~(for site donations only); or the adequacy of a proposed school whether a proposed facility donation can be developed into a school facility that meets the minimum adequacy guidelines~~;
  6. Estimated ~~site~~ development costs;
  7. Age and condition of ~~the real property (for facility donation only):~~ a facility donation; and
  8. Portion of the real property that can be used for academic purposes.
- G. ~~If the School Facilities Board Staff recommendation is to authorize the district to accept the donation,~~ the Staff shall ~~prepare a recommended 20 percent distribution amount. The 20 percent distribution~~

~~recommendation will be based on the fair market value of the real property proposed for donation that is usable for academic purposes.~~

**H.G.** The Board may waive or modify the requirements of this Section for good cause.

**R7-6-505. Constructing ~~Bond-Funded Schools~~ Bond-funded School Facilities on Land Funded by the ~~School Facilities~~ Board**

- A. A school district that acquires land by sale or lease ~~pursuant to~~ under A.R.S. § ~~15-2041~~ 41-5741 may construct a new school facility on ~~that~~ purchased or leased land using Class A bonds. The Board will include the square footage of the new school facility ~~shall be included~~ in the gross square footage of the school district ~~for purposes of determining needs for~~ to determine whether additional square footage ~~and or~~ building renewal distributions are needed.
- B. A school district that acquires land by sale or lease ~~pursuant to~~ under A.R.S. § ~~15-2041~~ 41-5741 may construct a school facility on ~~that~~ the purchased or leased land using Class B bonds ~~provided that if~~ the school district ~~agrees~~ acknowledges in writing that when the school district qualifies for a new school facility funded by the ~~School Facilities~~ Board, ~~that the School Facilities Board will~~ shall not provide funding ~~for the~~ to lease or purchase of an additional site for ~~that~~ the school facility. The Board will not include the square footage of ~~the~~ a new school facility constructed with Class B ~~bond monies~~ bonds ~~shall not be included~~ in the gross square footage of the school district ~~for purposes of determining needs for~~ to determine whether additional square footage ~~and or~~ building renewal distributions are needed.

**R7-6-506. Providing Technical Assistance in the Form of Project Management**

- A. A school district that does not have the experience or resources to ~~successfully oversee~~ manage successfully construction of a new school ~~construction project~~ facility may request technical support from the Board ~~pursuant to~~ under A.R.S. § ~~15-2002(13)~~ 41-5702(D)(13) in the form of project management ~~services~~.
- B. The ~~Executive~~ Director may approve ~~the project management~~ or deny a request made under subsection (A). ~~Should~~ If the ~~Executive~~ Director ~~deny~~:
1. Denies the request, the school district ~~has the right to~~ may appeal the decision to the Board; and
  2. Approves the request, the school district shall agree to reimburse the Board from allocated funds the cost of any independent contractors the Board uses to provide the project-management technical assistance.

- C. The Board shall ensure the cost of the project management shall be made a part of project-management technical assistance, if needed, is included in the overall cost of the new school facility, and those funds shall be derived from the total allocation for the project provided made by the School Facilities Board for construction of the new school facility. Should If the allocation of funds that the school district receives pursuant to under A.R.S. § 15-2041 41-5741 satisfy both the base cost of the new school facility and plus the cost of the project management project-management technical assistance, then the Board shall not provide any additional funds to the school district for project management services project-management technical assistance.
- ~~D.~~ If the school district's request for project management services is approved, the school district shall agree to reimburse the Board from its allocated funds for the cost of any independent contractors that the Board uses to provide the project management services.
- ~~E.D.~~ The Board may provide the a school district with monies funds to pay for the project management services project-management technical assistance in addition to the monies funds the school district receives pursuant to under A.R.S. § 15-2041 provided 41-5741 if:
1. The school district demonstrates that the monies funds it receives pursuant to under A.R.S. § 15-2041 41-5741 are not sufficient to build a school facility that meets the building adequacy guidelines and pay the fees for the project management; and
  2. The school district demonstrates in writing to the Board's satisfaction that the school district does not have the experience or resources necessary to successfully complete construction of the new school construction project facility successfully.

## **ARTICLE 6. CONTINGENCY FUNDS REPEALED**

### **R76601. Allocation and Use of Contingency Monies Repealed**

- ~~A.~~ A sum equal to a percentage of the construction bid shall be set aside as a contingency fund to cover the cost of unknown conditions that could arise during construction. The School Facilities Board shall set aside an amount equal to five percent of the base cost for new construction and ten percent of the base cost for renovation of a structure or system replacement to cover these potential costs. Contingency funds are not part of the construction budget and are to be used only if needed. For deficiency corrections projects, any contingency funds which are not used shall be returned to the deficiency corrections fund. For projects funded by the new school facilities fund, any contingency funds which are not used may be used by the school district in accordance with A.R.S. § 15-2041.
- ~~B.~~ The mechanism that is used to spend contingency funds during construction is a "change order." There are three types of situations that generally require a change order:

1. ~~An unknown condition that was not determined until after construction was started and that requires a change, deletion or addition to the construction contract.~~
  2. ~~The school district has determined to change the scope of work and add to or delete from the contract.~~
  3. ~~A change is required to correct a discrepancy between what the contractor bid and what the architect and owner intended. This type of change order could be determined an “error or omission” on the part of the architect. If so, the owner should pursue the architect’s error and omissions insurance to recover the costs of the required change.~~
- ~~C. Change orders can be additive or subtractive to the construction contract and both should be used. All changes in the scope of the contract and the contract documents should be considered potential change orders. Change order should not be used to correct conditions known prior to or discovered during the bid process. These should be addendum items and made part of the bid.~~
- ~~D. The following conditions apply to the use of all contingency monies allocated to a specific project approved by the School Facilities Board. If the district wishes to issue change orders that do not comply with these rules, the associated costs shall be accounted for separately and not considered part of the approved project. In other words, they would need to be paid out of separate monies and would not be considered part of the approved project, even though they might be included in the same basic contract. These costs would be paid for using local funds.~~
1. ~~The school district may use contingency monies only to cover change orders that are to correct unknown conditions.~~
  2. ~~Contingency funds may not be used to cover change orders for the other two types of situations discussed in subsection (D) above: the district has determined to change the scope of work during construction by adding components, or a change is required to correct a discrepancy created by the architect that could be considered an error or omission by the architect.~~
  3. ~~For deficiency correction projects performed pursuant to A.R.S. § 15-2021 only, the Executive Director shall have the discretion to authorize the use of contingency funds for expansion of scope, to accommodate low budget estimates, and for all other project related costs.~~
  4. ~~Contingency monies shall not be used to pay for “bid add alternates.” These items are not part of the final approved project.~~
- ~~E. A school district whose deficiency correction projects are combined with the deficiency correction projects of one or more additional school districts pursuant to R7-6-401 shall have the contingency amount included as a percentage of the overall set of projects that have been grouped together for such purposes. The Executive Director shall have the discretion to use, transfer, and/or combine the contingency amounts for any projects within such a group to any other project within the group of~~

~~projects. The Executive Director's adjustment authority pursuant to R7-6-401 shall be considered as a percentage or sum of the overall group of projects.~~

**F.** ~~The Board may modify or waive the requirements of this Section for good cause.~~

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 7. EDUCATION**

**CHAPTER 6. SCHOOL FACILITIES OVERSIGHT BOARD**

1. Identification of the rulemaking:

The Board's rules were made in 2001. Some of the rules were amended in 2020 through an expedited ruling making but no substantive changes were made at that time. As a result, the rules have become inconsistent with current industry standards and Board practice, technological changes, and best practices regarding education. The rules are being updated to address these issues and implement recommendations identified in a five-year-review report approved by the Council on November 3, 2020.

An exemption from Executive Order 2022-01 was provided for this rulemaking by Kaitlin Harrier, Director of the Governor's Office of Education, on March 8, 2022.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Until the rulemaking is completed, the Board's rules will remain inconsistent with industry standards and Board practice, technological changes, and best practices regarding education.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government for the Board to have rules that are inconsistent with industry standards and Board practice, technological changes, and best practices regarding education. This conduct potentially causes harm to the taxpayers who support construction, maintenance, and renewal of school facilities and the purchase of school equipment.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

When the rulemaking is complete, the Board's rules will no longer be inconsistent with industry standards and Board practice, technological changes, and best practices regarding education.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

The Board determined the rule amendments will have some economic impact. For example:

- R7-6-211, Classroom Fixtures and Equipment, is amended to allow electronic as well as non-electronic surfaces for classroom use. Electronic surfaces are more expensive than non-electronic surfaces. The estimated difference in cost is from \$300 to \$4,200 per surface depending on the kind chosen. A school facility requires multiple surfaces.
- R7-6-215, Classroom Air Quality, reduces the acceptable CO<sup>2</sup> level to 700 PPM above the ambient CO<sup>2</sup> level. This makes the requirement consistent with current industry standards. The Board estimates the cost of meeting this standard will be approximately \$75/unit annually.
- R7-6-221, Equipment for Learning and Technology Center, substitutes a multimedia display for a TV in the center. Depending on the kind of multimedia display chosen, the Board estimates an additional cost of \$1,920 to \$4,000 per unit.
- R7-6-235, Technology, requires a network connected multimedia device for every student rather than one device for every eight students. If each device costs approximately \$300, the cost to provide a device for each student rather than for every eight students would result in an increase of \$2,100/eight students.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jack Smith, Administrator

Address: 100 N 15th Avenue, Suite 301  
Phoenix, AZ 85007

Telephone: 602-421-1882

E-mail: [jack.smith@azdoa.gov](mailto:jack.smith@azdoa.gov)

Website: <https://sfb.az.gov>

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

The Board establishes minimum standards for school facilities and equipment. School districts are required to ensure school facilities in the district, even those constructed fully or partially with bonds by choice of a district, meet the minimum standards. School districts and the Board will be directly affected by, bear the costs of, and directly benefit from this rulemaking. However, because both the new school facilities and building renewal funds receive legislative appropriations, it is taxpayers who ultimately bear the costs of and directly benefit from this rulemaking.

The Division of School Facilities administers three programs related to school facilities: the new school facilities fund (A.R.S. § 41-5741); building renewal grant fund (A.R.S. § 41-5731); and emergency deficiencies corrections fund (A.R.S. § 41-5721). Both the new school facilities fund and the building renewal grant fund receive a legislative appropriation. The emergency deficiencies corrections fund receives funding from the new school facilities fund.

Each school district is required to prepare an annual capital plan. If the capital plan shows the school district will need a new school facility or an addition to an existing school facility within four years or will need land for a new school facility within 10 years, the school district is required to submit the capital plan to the Board and request funding.

There are 217 school districts in Arizona. During FY2021, the Board awarded more than \$98,000,000 for new school facilities in five school districts. The Board also approved 1,341 building renewal grants, which are for primary building renewal, and cancelled 83 previously approved building renewal projects because the school district proceeded before authorization or did not proceed timely. The Board made distributions from the emergency deficiencies correction fund to eight school districts and cancelled two previously approved projects.

Each year, the legislature is required to adjust the amount allocated per square foot of new school facility construction based on economic factors. The square-foot allocation includes an amount for classroom fixtures, equipment, and technology. The legislature uses the square-foot allocation and the number and size of new construction projects approved by the Board to determine the amount to appropriate each year.

Regardless of the fund from which monies are distributed, a school district is required to ensure school facilities and equipment meets the minimum standards established by the Board. The minimum standards are updated in this rulemaking. Many of the amendments simply update statutory references and clarify language. Others, such as allowing a warming kitchen and removing specificity regarding microscopes provide flexibility to school districts and remove regulatory burdens. The Board determined the following changes will have economic impact:

- R7-6-211, Classroom Fixtures and Equipment, is amended to allow electronic as well as non-electronic surfaces for classroom use. Electronic surfaces are more expensive than non-electronic surfaces. The estimated difference in cost is from \$300 to \$4,200 per surface depending on the kind chosen. A school facility requires multiple surfaces.
- R7-6-215, Classroom Air Quality, reduces the acceptable CO<sup>2</sup> level to 700 PPM above the ambient CO<sup>2</sup> level. This makes the requirement consistent with current industry standards. The Board estimates the cost of meeting this standard will be approximately \$75/unit annually.
- R7-6-221, Equipment for Learning and Technology Center, substitutes a multimedia display for a TV in the center. Depending on the kind of multimedia display chosen, the Board estimates an additional cost of \$1,920 to \$4,000 per unit.
- R7-6-235, Technology, requires a network connected multimedia device for every student rather than one device for every eight students. If each device costs approximately \$300, the cost to provide a device for each student rather than for every eight students would result in an increase of \$2,100/eight students.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing it. The Division administers the funds awarded to school districts.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are described in item 4. The Board will not need additional full-time employees to implement or enforce the new minimum standards.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

School districts are political subdivisions directly affected by the rulemaking. Their costs and benefits are described in item 4.

- c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).

No businesses of any size are directly impacted by the rulemaking.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

Private persons and consumers are not directly affected by the rulemaking.

9. Probable effects on state revenues:

Both the new school facilities fund and the building renewal grant fund receive legislative appropriations. The legislature adjusts the appropriation based on the annual square-foot allocation and the number and size of new construction projects approved by the Board. To the extent the updated minimum standards increase costs for classroom fixtures, equipment, and technology, there may be an impact on state revenues.

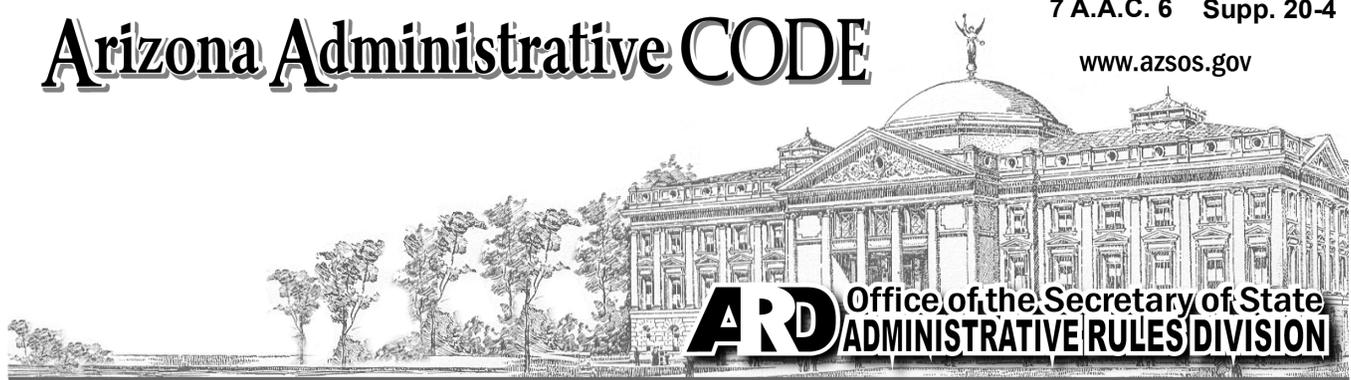
10. Less intrusive or less costly alternative methods considered:

The updated minimum standards are not intrusive. The minimum standards are consistent with industry standards and best practices regarding education. No alternative standards were considered.

# Arizona Administrative CODE

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## TITLE 7. EDUCATION

### CHAPTER 6. SCHOOL FACILITIES BOARD

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2020 through December 31, 2020 (Supp. 20-4).

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#### Questions about these rules? Contact:

Name: Nick Loper, Executive Consultant  
 Address: 100 N. 15th Ave., Suite 103  
 Phoenix, AZ 85007  
 Telephone: (602) 620-4868  
 E-mail: [nick.loper@azdoa.gov](mailto:nick.loper@azdoa.gov)  
 Website: <https://sfb.az.gov>

**The release of this Chapter in Supp. 20-4 replaces Supp. 06-4, 1-22 pages**

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

### PERSONAL USE/COMMERCIAL USE

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*Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.*



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**TITLE 7. EDUCATION**

**CHAPTER 6. SCHOOL FACILITIES BOARD**

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-4).*

*Editor's Note: This Chapter contains rules which were adopted, amended, repealed, or renumbered under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1998, 5th Special Session, Chapter 1, section 55, as amended by Laws 1999, Chapter 299, section 39. Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.*

*Title 7, Chapter 6, adopted by exempt rulemaking at 6 A.A.R. 597, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1).*

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## CHAPTER 6. SCHOOL FACILITIES BOARD

**ARTICLE 1. DEFINITIONS****R7-6-101. Definitions**

The definitions at A.R.S. § 15-2032 apply to this Chapter. Additionally, unless otherwise specified, in this Chapter:

1. "Ambient CO<sup>2</sup> level" means the carbon dioxide level of the outside air.
2. "All-weather surface" means an area for vehicular use or parking that is surfaced with asphalt, concrete, chip seal, graded and compacted gravel, or other stabilized system.
3. "Board" means the School Facilities Board.
4. "Decibel" means a unit for expressing the relative intensity of sounds.
5. "Eligible students" has the same meaning as prescribed at A.R.S. § 15-901.
6. "Equipment" means an item not affixed to the real property of a school facility.
7. "Exterior envelope" means the exterior walls, floor, and roof of a building.
8. "Fixture" means an item affixed to the real property of a school facility.
9. "Foot-candle" means the amount of illumination the inside surface of a one-foot-radius sphere would receive from a candle 7/8 inch in diameter burning at the exact center of the sphere at 7.776 grams per hour.
10. "FTE" means full-time equivalent.
11. "General classroom" means a space that can be configured for instruction in at least the areas of language arts, mathematics, and social studies.
12. "HVAC" means a heating, ventilation, and air conditioning system. The air conditioning system may or may not be refrigerated.
13. "IEP" means individualized educational plan, a legal document required by law for each public school child who needs special education.
14. "Normal conditions" means occupancy during regular school hours while the building system is operating.
15. "PPM" means parts per million.
16. "Random sample" means arbitrary selection through a process in which each classroom in each building has an equal chance of being selected.
17. "School facility" means a building or group of buildings and outdoor area that are administered together to comprise a school campus.
18. "School site" means one or more parcels of land where a school facility is located. More than one school facility may be located on a school site.
19. "Specialty classroom" means classroom square footage specifically designed for instruction in science, physical education, career and technical education, or art.
20. "Student" means an individual:
  - a. Enrolled at a school facility; and
  - b. In average daily membership, which is defined at A.R.S. § 15-901.
21. "Student body" means the number of students at a school facility.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Amended by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-102. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES****R7-6-201. Application**

- A. The provisions of this Chapter are applicable to a school facility and equipment that are necessary to meet the minimum school facility guidelines established in this Article or to meet the gross square footage standards and are in addition to standards prescribed by law.
- B. Notwithstanding subsection (A), new construction projects and building renewal projects approved before the effective date of this rulemaking are exempt from changes made in this rulemaking.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-202. Reserved****R7-6-203. Reserved****R7-6-204. Reserved****R7-6-205. School Site**

- A. A school site shall have safe access, parking, drainage, and security to accommodate a school facility that complies with:
  1. The minimum gross square footage requirements established in A.R.S. § 15-2011, for the number of students at the school facility; and
  2. This Chapter.
- B. A school site provides safe access by having:
  1. A student drop-off area; and
  2. A pedestrian pathway that allows students to enter the school facility through a designated point of entry without crossing vehicular traffic or by crossing vehicular traffic at a designated crosswalk.
- C. A school site provides adequate parking by having an all-weather surface area large enough to accommodate one parking space per staff FTE and one visitor parking space per 100 students. A school site that is unable to provide adequate parking may have the sufficiency of parking at the school site determined by the Board using the following criteria:
  1. Availability of street parking around the school;
  2. Availability of any nearby parking lots;
  3. Availability of public transit;
  4. Number of staff who drive to work on a daily basis; and
  5. The average number of visitors on a daily basis.
- D. A school site provides adequate drainage if the school site is prepared in a manner consistent with the drainage and floodplain management standards of the jurisdiction in which the school site is located.
- E. A school site provides adequate security if there is a fenced or walled, outdoor, play or physical education area for preschool students with disabilities and students in kindergarten through grade six. A school site that is unable to provide adequate

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security may have the sufficiency of security at the school site determined by the Board using the following criteria:

1. Amount of vehicular traffic near the school site;
2. Existence of hazardous or natural barriers on or near the school site;
3. The amount of animal nuisance near the school site; and
4. Visibility of the outdoor, play or physical education area.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-206. Reserved**

**R7-6-207. Reserved**

**R7-6-208. Reserved**

**R7-6-209. Reserved**

**R7-6-210. Classroom Square Footage**

- A. A school district shall have school facilities with the following minimum cumulative classroom square footage:
1. For preschool students with disabilities through grade three: 32 square feet per student;
  2. For grades four through six: 28 square feet per student;
  3. For grades seven and eight: 26 square feet per student; and
  4. For grades nine through 12: 25 square feet per student.
- B. Classroom square footage of a school facility is measured from interior wall to interior wall of a classroom and is the space required for teaching. Both general and specialty classrooms are included in the classroom square footage of a school facility.
- C. Cumulative classroom square footage is measured as follows:
1. 100 percent of the classroom square footage usable for general classroom purposes and occupied throughout a day by the same students in programs for preschool students with disabilities, kindergarten, and grades one through six;
  2. 90 percent of the classroom square footage usable for general and specialty classroom purposes in programs for students in grades seven and eight; and
  3. 85 percent of the classroom square footage usable for general and specialty classroom purposes in programs for students in grades nine through 12.
- D. Classroom square footage includes space allocated for any of the following purposes:
1. Garment storage,
  2. Supply storage,
  3. Work counter; and
  4. Teacher or student collaboration.
- E. An exterior space may be included in the classroom square footage of a school facility if the exterior space is covered and meets all other standards in this Chapter.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-211. Classroom Fixtures and Equipment**

Each general and specialty classroom shall:

1. Contain a work surface and seat for each student, teacher, and other individual regularly assigned to the classroom. The work surface and seat shall be:
  - a. Appropriate for the normal activity of the class conducted in the room, and
  - b. Capable of being moved into different configurations;
2. Have one or more, non-electronic, mounted or retractable, surfaces, at least three feet by five feet, which fulfill all of the following purposes:
  - a. Is erasable,
  - b. Is suitable for projection, and
  - c. Is suitable for display;
3. Have storage for classroom materials or conveniently accessible storage; and
4. Have secure storage for student records or conveniently accessible secure storage. Student records may be stored electronically.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-212. Classroom Lighting**

Each general, science, and art classroom shall have a light system capable of maintaining at least:

1. Fifty foot-candles of light if the light is provided by incandescent, halogen, or fluorescent bulbs; or
2. Thirty foot-candles of light if the light is provided by LED (light emitting diode) bulbs.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-213. Classroom Temperature**

- A. A school facility shall have an HVAC system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom.
- B. Except in areas where the elevation is above 5,000 feet, defective or non-operable air conditioners and evaporative coolers shall be replaced with air conditioning. Non-air conditioned schools with elevations less than 5,000 feet shall be air-conditioned.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-214. Classroom Acoustics**

The sustained background sound level of each general, science, and art classroom shall be less than 55 decibels.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

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**R7-6-215. Classroom Air Quality**

The CO<sup>2</sup> level in each general and specialty classroom shall not exceed 800 PPM above the ambient CO<sup>2</sup> level.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-216. Measuring Classroom Comfort**

To determine whether a school facility complies with the standards in R7-6-212 through R7-6-215:

1. Classroom lighting, temperature, acoustics, and air quality shall be measured at a work surface in the approximate center of a classroom under normal conditions;
2. Measuring shall be performed for a random sample of 10 percent of the general, science, and art classrooms in each building of the school facility; and
3. All portable or modular buildings manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-217. Reserved**

**R7-6-218. Reserved**

**R7-6-219. Reserved**

**R7-6-220. Learning and Technology Center**

- A. A school facility shall have a learning and technology center with space for students to access electronic and hard-copy research and reading materials. The learning and technology center shall include space for reading, listening, and viewing materials.
- B. For an elementary school facility that serves at least 150 students, the learning and technology center shall have space equal to the greater of 1000 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.
- C. For a middle or junior high or high school facility that serves at least 150 students, the learning and technology center shall have space equal to the greater of 1200 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-221. Equipment for Learning and Technology Center**

- A. The learning and technology center of a school facility shall contain the following minimum equipment:
  1. One linear foot of book shelf space per student;
  2. For a school facility of 150 or more students, one work surface and seat for every 20 students, minimum of 15, maximum of 75;
  3. One TV;
  4. Projection equipment and projection surface;

5. Ten books per student; and
6. An electronic or hard copy of each of the following:
  - a. Almanac,
  - b. Encyclopedia,
  - c. Atlas, and
  - d. Unabridged dictionary.

- B. If a hard-copy almanac, encyclopedia, or atlas is used, each shall have a publication date of 2000 or later.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-222. Reserved**

**R7-6-223. Reserved**

**R7-6-224. Reserved**

**R7-6-225. Cafeteria**

A school facility shall have covered space in which students are able to eat within the school site, outside of classrooms. The space used as a cafeteria may have more than one function and may fulfill more than one requirement in this Chapter.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-226. Food Service**

- A. A school facility shall have space, fixtures, and equipment sufficient for receiving, storing, preparing, and serving food to students. The food service fixtures and equipment shall be in or accessible to the cafeteria space.
- B. A school facility shall ensure food service fixtures and equipment comply with county health codes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-227. Equipment List for Food Service**

- A. A school facility that receives, stores, prepares, and serves food to students shall have the following fixtures and equipment:
  1. One three-compartment sink,
  2. One double-stack oven or a warming oven,
  3. One dishwasher if reusable dishes and silverware are used,
  4. One hot-food holding appliance,
  5. One range with hood,
  6. One refrigerator,
  7. One freezer, and
  8. One milk refrigerator.
- B. An alternative may be substituted for any item in subsection (A) if the alternative enables the school facility to receive, store, prepare, and serve food to students.
- C. A school facility that receives, stores, and serves food prepared off the school site may adjust the items in subsection (A) accordingly.

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**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-228. Reserved**

**R7-6-229. Reserved**

**R7-6-230. Multiuse Space**

A school facility shall have a space capable of being used for student assembly. The space shall be:

1. Large enough to accommodate one-third of the student body,
2. The same size or larger than an average classroom at the school facility, and
3. At least seven square feet multiplied by one-third of the student body in addition to the square footage of open aisle and exiting path space.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-231. Reserved**

**R7-6-232. Reserved**

**R7-6-233. Reserved**

**R7-6-234. Reserved**

**R7-6-235. Technology**

A school facility shall provide at least one network connected multimedia device, available for student use, for every eight students. A multimedia device is a computer, tablet, or other smart device with internet access capable of presenting multimedia content.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-236. Reserved**

**R7-6-237. Reserved**

**R7-6-238. Reserved**

**R7-6-239. Reserved**

**R7-6-240. Transportation**

- A. Pupil transportation vehicles manufactured prior to 1978 shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.
- B. Diesel powered pupil transportation vehicles with more than 400,000 miles and gasoline powered pupil transportation vehicles with more than 200,000 miles shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.
- C. Diesel powered pupil transportation vehicles with more than 266,800 miles and gasoline powered pupil transportation vehicles with more than 133,400 miles shall be replaced if at least

one-half of the miles accumulated on the vehicle were driven on unpaved roads and if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-241. Reserved**

**R7-6-242. Reserved**

**R7-6-243. Reserved**

**R7-6-244. Reserved**

**R7-6-245. Science Facilities**

- A. A school facility with students in grades five through 12 shall have classroom square footage for delivery of practical instruction in science.
  1. For grades five through eight, no classroom square footage is required other than as specified in R7-6-210.
  2. For grades nine through 12, four square feet per student is required for practical instruction in science. The space shall not be smaller than the average classroom at the facility and may be used for other instruction when not needed for practical instruction in science.
- B. Except as specified in R7-6-251, a school facility with students in grades five through 12 shall have the science fixtures and equipment specified in R7-6-246 for delivery of practical instruction in science.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-246. Equipment List for Science Facilities**

- A. Science facilities for students in grades nine through 12 shall have the following fixtures and equipment:
  1. One demonstration table with non-corrosive surface per 250 students;
  2. Six laboratory stations with a non-corrosive surface per 250 students;
  3. One fume hood;
  4. One chemical storage unit per 1,000 students;
  5. One eyewash or safety shower station per 250 students;
  6. Access to one dissecting microscope per 25 students, minimum of 12 microscopes or the number equal to one-half the number of students in grades nine through 12 divided by 25, whichever is fewer; and
  7. One refrigerator.
- B. Science facilities for students in grades five through 12 shall have the following fixtures and equipment:
  1. One sink per 250 students;
  2. Access to one compound microscope per 25 students, minimum of 12 microscopes or the number equal to one-half the number of students in grades five through 12 divided by 25, whichever is fewer; and
  3. One balance per 250 students.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an

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immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-247. Arts Facilities; Career and Technical Education Facilities**

- A. Except as specified in R7-6-251, a school facility with students in grades seven through 12 shall have space to deliver art education programs, including visual, music, and performing arts, and career and technical education programs.
- B. A school facility with students in grades seven through 12 shall have four square feet per student of space for art education and/or career and technical education. The space shall not be smaller than the average classroom at the facility and may be used for other instruction when not needed for instruction in the arts or career and technical education.
- C. A school facility with students in kindergarten through sixth grade may deliver art education in the classroom square footage specified in R7-6-210. Education in performing arts may be delivered to students in kindergarten through sixth grade in spaces such as a multiuse space, gymnasium, or cafeteria if the spaces have appropriate acoustical treatment.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-248. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-249. Physical Education and Comprehensive Health Program Facilities**

- A. A school facility shall have classroom square footage for indoor physical education activity and a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.
- B. The indoor classroom square footage available for physical education activity shall be:
  1. For a school facility designed to serve no more than 50 students: at least 1,600 square feet in a single space;
  2. For a school facility designed to serve 51 to 125 students: at least 2,600 square feet in a single space;
  3. For a school facility designed to serve 126 to 600 students: at least 5,100 square feet, of which at least 2,600 square feet is in a single space; and
  4. For a school facility designed to serve more than 600 students: at least 7,500 square feet, which may include space that also serves as a cafeteria.
- C. The classroom square footage designated in subsection (B) may have more than one function including the comprehensive health program.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-250. Equipment for Physical Education Activity**

- A. A school facility shall have one hardscape equivalent in size to an outdoor basketball court per 300 students to a maximum of three hardscapes.
- B. A school facility with students in grades seven through 12 shall have a sports field appropriate for softball, hardball, football, track, soccer, or other sports.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-251. Alternative Delivery Method**

A school district may use an alternative method to deliver instruction in art, science, or career and technical education. Before an alternative method is used, the school district shall:

1. Have the school district governing board determine the alternative method is capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject; and
2. Approve use of the alternative method.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-252. Reserved****R7-6-253. Reserved****R7-6-254. Reserved****R7-6-255. Parent Work Space**

- A. If parents are invited to assist with school activities, a school facility shall include a work space large enough to accommodate the number of parents expected to assist with school activities at one time.
- B. The parent work space may be in multiple locations throughout the school facility and may have more than one function.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-256. Two-way Internal Communication System**

A school facility shall have a two-way internal communication system, such as a telephone between a central location and each general and specialty classroom, the learning and technology center, and the cafeteria.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-257. Fire Alarm**

A school facility shall have a fire alarm system as required by the State Fire Marshal.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

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**R7-6-258. Administrative Space**

- A. A school facility shall have space for use by the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes, a space between 150 square feet and 1.5 square feet per student, as reasonable for the size of the anticipated student body, is required. The maximum may be exceeded.
- B. A school facility shall have a dedicated space in which to isolate a sick student from the other students. This space shall be accessible to a restroom and large enough to accommodate one cot per 200 students, with a maximum of four cots.
- C. A school facility shall have work space available to the faculty that is in addition to any work space in or near a classroom. A space between 150 square feet and one square foot per student, as reasonable for the size of the anticipated student body, is required. The faculty work space may be in multiple locations throughout the school facility and may have more than one function.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-259. Reserved****R7-6-260. Laws and Building Codes**

- A. To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Existing school buildings are not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the building or fire code of the jurisdiction where the building is located.
- B. At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-261. Energy Saving Measures**

Both construction of a new school facility and renewal of an existing school facility shall include energy conservation measures that will provide dollar savings in excess of the cost of the conservation measure within eight years of the construction or renewal.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-262. Reserved****R7-6-263. Reserved****R7-6-264. Reserved****R7-6-265. Building Systems**

- A. As required under A.R.S. § 15-2011(B)(3), building systems in a school facility shall be in working order and capable of being properly maintained. A building system is considered to be in working order and capable of being maintained if:
1. The system is capable of being operated as intended;

2. The system is capable of being maintained according to manufacturer's instructions;
3. Newly manufactured or refurbished replacement parts are available;
4. The remaining life expectancy of the system is at least three years;
5. The system is capable of supporting the gross square footage of the school facility; and
6. Components of the system present no imminent danger of personal injury.

- B. Building systems required under A.R.S. § 15-2011(B)(3) to be in working order and capable of being maintained include roof, plumbing, telephone, electrical, and HVAC systems. Additionally, under this Chapter, the following building systems shall be in working order and capable of being properly maintained: fire alarm, two-way internal communication, network cabling, and security systems.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-266. Reserved****R7-6-267. Reserved****R7-6-268. Reserved****R7-6-269. Reserved****R7-6-270. Building Structural Soundness**

As required under A.R.S. § 15-2011(B)(4), all buildings of a school facility shall be structurally sound. A building of a school facility is considered structurally sound if the building:

1. Presents no imminent danger of personal harm,
2. Has no visible signs of major decay or distress, and
3. Appears to have at least three years of remaining life expectancy.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-271. Exterior Envelope, Interior Surfaces and Interior Finishes**

The exterior envelope, interior surfaces, and interior finishes of a school facility shall be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are constructed of materials requiring minimal maintenance, including painting;
  - b. Walls, roof, doors, and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years.
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;

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- b. Free of friable asbestos; and
- c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-272. Reserved**

**R7-6-273. Reserved**

**R7-6-274. Reserved**

**R7-6-275. Minimum Gross Square Footage**

Each school district shall have sufficient school facilities, which comply with minimum school facility guidelines established in this Article, to meet the per pupil minimum adequate gross square footage requirements for such district as determined by law, for such district based on number and grade distribution of the students served by the district.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-276. Assessment of Minimum Gross Square Footage**

- A. Computation of the gross square footage of a school facility may be by physical measure or by calculation based on architectural plan documents.
- B. The gross square footage of a school facility equals all space within the facility excluding space used for district administrative purposes.
- C. The gross square footage of a district shall equal the sum of the gross square footage of each school facility in the district.
- D. The minimum gross square footage of a district equals the sum of the products of the students in each grade or program for preschool children with disabilities or kindergarten program multiplied by the minimum adequate gross square footage requirements per pupil, applicable to the district for such grade or program.
- E. For the purpose of assessment of minimum gross square footage, the number of children in all grades and kindergarten shall be evenly distributed across all grades and kindergarten served by the district.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-277. Reserved**

**R7-6-278. Reserved**

**R7-6-279. Reserved**

**R7-6-280. Expired**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 3252, effective June 30, 2005 (05-3).

**R7-6-281. Reserved**

**R7-6-282. Reserved**

**R7-6-283. Reserved**

**R7-6-284. Reserved**

**R7-6-285. Guidelines Exception**

The Board may grant an exception from any of the guidelines in this Chapter. To obtain an exception, the governing board of the school district shall submit a written request to the Board. The Board shall grant an exception if it determines the intent of the guideline is capable of being met by the school district in an alternative manner. If the Board grants the exception, the Board shall deem the school district meets the guideline and is not eligible for state funding to meet the guideline.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**ARTICLE 3. SQUARE FOOTAGE CALCULATIONS****R7-6-301. Square Footage Calculations**

- A. A school district may use Class A bonds to supplement any project funded by the School Facilities Board pursuant to A.R.S. § 15-2021 or A.R.S. § 15-2041. Pursuant to A.R.S. § 5-2002(H), when a school district adds square footage to the district through the construction of a new school using Class A bonds, the School Facilities Board shall not provide funding to supplement the new school construction.
- B. When a school district adds square footage to the district through the construction of a new school using either Class B bonds, or unrestricted capital outlay monies, the School Facilities Board shall not include the square footage of the new school in the gross square footage of the school district for purposes of calculating building renewal distributions pursuant to A.R.S. § 15-2031 and for determining needs for additional square footage pursuant to A.R.S. § 15-2011 and A.R.S. § 15-2041.
- C. When a school district adds square footage to the district through the construction of a new school using Class A bonds, the School Facilities Board shall include the square footage of the new school in the gross square footage of the school district for purposes of calculating building renewal distributions pursuant to A.R.S. § 15-2031 and for determining needs for additional square footage pursuant to A.R.S. § 15-2011 and A.R.S. § 15-2041.
- D. A school district that uses Class B bonds and/or unrestricted capital outlay monies to add or replace square footage at existing schools shall have the additional square footage or replacement square footage treated as follows:
  1. A school district that adds square footage to an existing school with the use of Class B bonds or unrestricted capital outlay monies shall not have the additional square footage included in the determination of minimum adequate square footage pursuant to A.R.S. § 15-2011(C), but the School Facilities Board shall consider the additional square footage for purposes of determining adequacy of the functional components of the school as specified in the Minimum School Facilities Guidelines set forth in R7-6-201 through R7-6-285.
  2. A school district that both removes and adds square footage with the use of Class B bonds or unrestricted capital outlay monies shall not have the net additional square

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footage included in the determination of minimum adequate square footage pursuant to A.R.S. § 15-2011(C), but the School Facilities Board shall consider the net additional square footage for purposes of determining adequacy of the functional components of the school as specified in the Minimum School Facilities Guidelines set forth in R7-6-201 through R7-6-285.

3. For purposes of calculating building renewal pursuant to A.R.S. § 15-2031, replacement square footage constructed with Class B bonds or unrestricted capital outlay monies shall be included, but net additional square footage shall be excluded.
  4. If square footage is replaced at an existing school with the use of Class B bonds or unrestricted capital outlay monies, the student capacity of the facility after completion of the project will be determined in the same manner as it would have been determined prior to the addition. If Class B bonds or unrestricted capital outlay monies are used to construct a complete replacement school, the student capacity of the facility once the project is completed will be based on the provisions of A.R.S. § 15-2011(C).
  5. For purposes of this Section, replacement square footage is defined as square footage constructed with Class B bonds or unrestricted capital outlay monies that replaces existing square footage.
- E. If square footage is added to or replaced at an existing school with the use of Class A bonds, the student capacity of the facility after completion of the project will be determined in the same manner as it would have been determined prior to the addition.
- F. The method of computing the funding and square footage for any expansion of a core facility previously funded by the School Facilities Board shall follow the same method that was used for computing the original core facility.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-302. Modification of Square Footage for Geographic Factors**

- A. In those school districts where students are transported one hour or more via the most reasonable and direct route or where students reside 45 miles or more from the closest school via the most reasonable and direct route, and where 100 or more students are affected by these conditions within the same region, the School Facilities Board shall provide additional school space to the district to accommodate the educational needs of the affected students. However, the educational space provided may be modified as the Board sees fit in making a conscientious effort to meet the Minimum Adequacy Guidelines without requiring extraordinary expenditures of public funds.
- B. If an elementary school district that is not in a high school district unifies after June 30, 2005, the resulting unified school district may qualify for high school space under A.R.S. § 15-2041 if it meets the following criteria:
  1. The elementary school district unifies after June 30, 2005; and
  2. The resulting unified school district is projected to have more than 350 resident high school students being served in school districts other than the student's resident school district within three years following the current fiscal year; and

3. One of the following is true:
  - a. At least 350 of the high school students would travel 20 miles or more to the receiving school facility; or
  - b. The receiving school district is projected to need additional high school space within seven years. For purposes of this analysis, the projected average daily membership of the receiving district includes the high school students of both the receiving and sending districts.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 3988, effective December 4, 2006 (Supp. 06-4).

**R7-6-303. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-304. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-305. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-306. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

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- R7-6-307. Reserved
- R7-6-308. Reserved
- R7-6-309. Reserved
- R7-6-310. Reserved
- R7-6-311. Reserved
- R7-6-312. Reserved
- R7-6-313. Reserved
- R7-6-314. Reserved
- R7-6-315. Reserved
- R7-6-316. Reserved
- R7-6-317. Reserved
- R7-6-318. Reserved
- R7-6-319. Reserved
- R7-6-320. Reserved
- R7-6-321. Repealed

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 4. EXPIRED**

- R7-6-401. Expired

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 3252, effective June 30, 2005 (05-3).

**ARTICLE 5. NEW SCHOOL AND LAND FUNDING**

- R7-6-501. Capital Plans

If a school district's capital plan, developed pursuant to A.R.S. § 15-2041, indicates a need for a new school or an addition to an existing school within the next four years or a need for land within the next ten years, the school district shall complete the capital plan packet issued by the School Facilities Board and return the packet to the Board by the announced deadline.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

- R7-6-502. Funding for New Schools or Additional Square Footage

A. The data submitted by each school district requesting additional square footage under the capital plan shall be reviewed by staff to determine student capacity. Additionally, staff shall review and verify district student population projections and the existing square footage in the district. The staff shall prepare a New Construction Analysis for the district.

- B. If the proposed new school facilities are located in territory in the vicinity of a military airport as defined in A.R.S. § 28-8461, the Board shall provide notice to the military airport of the proposed new school facility construction and seek the military airports comments and analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport operations that may have an adverse effect on public health and safety. The Board shall consider and analyze the comments and analysis provided by the military airport prior to making a final determination to fund the new square footage.
- C. The Board shall make a decision regarding the number of square feet and students to be funded for the district, the appropriate cost per square foot and the total budget. At the time the Board is making its decision, the New Construction Analysis shall be available to the Board members and the school district. The school district may address the Board at this time.
- D. A school district that is approved for additional square footage shall have 60 days from the date of notification to officially accept, in writing, funding for the square footage approved by the Board or the approval shall expire. After a school district has accepted a project in writing and has signed the Terms and Conditions for New School Funding, the Board shall provide five percent of the monies approved for architectural and engineering fees for projects of \$500,000 or more. The individual school district shall be responsible for establishing the actual A and E amount.
- E. A school district that receives approval for additional square footage from the Board shall proceed with the design development plan and specifications for the project. Two copies of the proposed educational goals or specifications and schematic design, with budget estimates are required to be submitted to the Board's staff. The items required to be included in the estimated budget are all elements of new construction, excluding land acquisition. These elements include, but are not limited to:
  1. Architectural and engineering fees;
  2. Survey, testing, permits, advertising and printing;
  3. Construction costs;
  4. Furniture, fixtures and equipment;
  5. Any necessary project management; and
  6. A five percent contingency amount. After Board staff review, the school district shall proceed with a preliminary bid package.
- F. If the school district includes reasonable upgrades to the new construction project for energy conservation purposes, the Board shall provide funding upgrades above the formula based award to cover the full amount of the upgrade. Upgrades will only be funded if the upgrade receives pre-approval by the Board staff and the school district architect or engineer certifies that the upgrade will provide dollar savings in excess of the cost of the upgrade within an eight-year period.
- G. Upon review of the submitted schematic design, budget estimates and preliminary bid package, the Board's staff shall make a recommendation to the Board regarding the appropriateness of the school district to proceed with the additional square footage and the efficiency and effectiveness of the plan. The staff recommendation shall be based on whether the project is within the original scope and Board approved budget (including square footage and number of students), the project meets the building adequacy standards, initial comments from the local building authority and whether revised student population projections continue to justify the additional square footage. If the Board approves the project, the school district shall be authorized to proceed with the final bid package. Prior

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to authorization to contract the school district shall document that it has obtained local (city, county or equivalent) building department approval. For projects outside of the original scope and /or Board approved budget or that do not meet the minimum adequacy guidelines, the Board may instruct the school district to resubmit the project, or the Board may make an alternative decision. Local funds may be used by the school district in conjunction with the Board approved funding.

- H. Upon receipt of bids by the school district, the Executive Director shall authorize the district to proceed with the contract if the school district has documented that it has obtained local (city, county or equivalent) building department approval, and the bid is within the original scope and Board approved budget, and meets the building adequacy standards. The Executive Director may make an alternative recommendation to the full Board.
- I. The Board-approved funding for additional square footage shall be available to the school district for one year from the date of notification. The bid process shall be completed within the one-year period. The Board shall consider requests for an extension beyond the one year and may grant an extension for good reason.
- J. The Board may modify or waive the requirements of this Section for good cause.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-503. Funding for Land**

- A. The School Facilities Board follows a three-step approval process for the funding of land that is classified as Step One - Justification of Need for Land; Step Two - Request to Purchase a Specific Site; and Step Three - Due Diligence. The executive director may deviate from the three-step approval process to meet other circumstances as they arise, such as purchasing state-owned land and condemnation and bring such recommendations to the full Board.
- B. Step One is the initial request for land for new construction. A school district that currently owns land shall demonstrate that the district-owned property is not suitable for the needed new school in order for the school district to receive funding for the acquisition of land.
- C. Step Two includes the following:
  1. The school district shall provide a map of the district showing current schools and the projected student population, grade levels served and attendance boundaries in various locations in the district, which supports the location of the new school at the requested site. The school district shall also provide a listing of vacant parcels currently owned by the school district (including the size of each parcel and its location), describe the site selection process, explain why the site requested was chosen over alternative sites, and summarize any joint use provisions or other intergovernmental agreements related to the site. The school district shall also provide a legal description of the desired site, the size of the site and an estimate of the cost of the site. The school district may provide information on more than one site.
  2. The Board shall make a decision regarding the site size for each site. The range of acreage table approved by the Board is provided to allow school districts some leeway in site selection. The school district shall provide special justification if the site size is not within the range shown on the range of acreage table. Allowances shall not be granted for additional acreage for limited use activities that are only remotely related to the teaching and learning enterprise. Limited use activities would include, but not be limited to, athletic fields that are only used for inter-scholastic competition rather than daily activities, and non-school related community functions. The site size will be based on the eventual size of the school, if expansion is planned. The school district may request a larger or smaller site if conditions require. The school district may purchase additional acres with local funds. School districts should give careful consideration to joint-use sites such as those which adjoin community parks and play grounds. The ranges indicated are not intended to dictate a minimum acreage if a joint-use agreement provides the school with access to adjoining public space.
- 3. If a school district needs monies to verify, gather and submit the information required in Step Three, the school district shall submit a cost estimate to the Board, and the Board shall approve or disapprove the request for monies. Rather than allocating monies to a school district to verify, gather and submit information required in Step Three, the Board may approve the staff of the School Facilities Board to contract directly for such services, in which case the contractors will be paid directly by the Board.
- D. If the school district receives approval to proceed to Step Three, the following information about the site shall be acquired:
  1. An appraisal of the land that documents that the proposed cost is at or below the fair market value.
  2. Legal description of the land.
  3. Level one environmental assessment, plus the following factors (if not included):
    - a. Hazardous materials
    - b. Archaeology
    - c. Endangered flora and fauna
    - d. Noise
    - e. Soil Conditions
    - f. Adjacent land owners and/or uses
  4. Boundary and Topographical Survey
  5. Drainage statement
  6. Site development cost
  7. Photographic survey (if required by planning and zoning departments)
  8. Feasibility site diagram-conceptual study by a design professional illustrating proposed development of the site (based on the eventual size of the school, if there are plans for expansion), indicating:
    - a. Property lines and measurements
    - b. Setbacks, right-of-ways, and easements
    - c. Vehicular access and parking
    - d. Pedestrian and bicycle access
    - e. Building zone
    - f. Drainage concept
    - g. Utility routes or systems
    - h. Activity fields and courts
    - i. Limit-lines and calculation of usable area
    - j. Existing features to be demolished or preserved
    - k. Future expansion capability
- E. Final distribution of monies to purchase the site may be made by the Board if Step Three reveals no serious problem with the site. If the actual cost of the site does not exceed the Board approved amount the Executive Director may make the final determination of site funding without further action by the Board. If monies were distributed to the school district to verify, gather and submit the information required based on a cost estimate, an adjustment for the actual cost shall be made at the time of the final distribution. The school district shall provide documentation to the Board of the actual expenditures from

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the monies provided and the actual closing costs within 60 days of the final distribution. Expenditures exceeding the amount provided pursuant to subsection (C)(3) of this Section require approval by the Board. If the site is rejected as a result of information gathered in Step Three, the school district may repeat Steps Two and Three with a new site.

- F. The Board may modify or waive the requirements of this Section for good cause.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-504. Donations of Real Property**

- A. A school district seeking to acquire real property by donation pursuant to A.R.S. § 15-2041 shall complete the school site and school facility donation information requirements form and submit the form to the School Facilities Board. The information requested on the form for land shall include, among other items, a district map identifying existing school sites and facilities, student population and the location of the donation. The information requested on the form for a facility shall include, among other items, the size of the facility, grade levels served and location. If all of the information required is not available and if a school district needs monies to verify, gather and submit the information required, it shall submit a cost estimate at the same time it submits the information that is available.
- B. If all information is available, the School Facilities Board staff shall analyze the request to accept the donation and make a recommendation to the Board. If all information is not available, the School Facilities Board staff shall analyze the request on the basis of whether the school district should be awarded the funds necessary to complete the information gathering process, and shall make a recommendation to the Board. At the time the Board is making its decision, the staff analysis and recommendation shall be available to the School Facilities Board members and the applicant school district. The applicant school district may address the Board.
- C. If the Board approval is to award funds necessary to complete the information gathering process, the district shall be notified by the Board Staff and upon acceptance may proceed to gather the additional information required. Once the additional information is submitted to the Board, the Staff shall analyze the request to accept the donation and make a recommendation to the Board as stated in subsection (B).
- D. If the Board approves the district request to accept the donation, the Board staff shall notify the district. The distribution of 20 percent of the value of the accepted donation pursuant to A.R.S. § 15-2041 shall be awarded to the school district upon notification to the Board that the donation has been accepted by the district. The district shall submit documentation of its governing board action and documentation that the property title has been transferred to the district. Upon receipt of this documentation Board staff shall be authorized to distribute the approved 20 percent amount.
- E. If monies were distributed to the district to verify, gather and submit the information required based on an estimated cost, an adjustment for the actual cost shall be made at the time of the final distribution. The district shall provide documentation to the Board of the actual expenditures from the monies provided. Expenditures exceeding any amounts provided pursuant to R7-6-503(C)(3) shall require approval by the Board.
- F. In determining whether the real property proposed for donation is at an appropriate school site, the School Facilities Board Staff analysis shall be based on the following:
1. Location of the proposed donation of real property.

2. District needs for additional student capacity.
3. District needs for additional land (for site donations only).
4. Usable acres proposed for donation, taking into consideration School Facilities Board adopted usable acreage requirements.
5. The ability of a proposed site donation to accommodate a school facility that meets the minimum adequacy guidelines (for site donations only), or the adequacy of a proposed school facility donation.
6. Estimated site development costs.
7. Age and condition of the real property (for facility donation only).
8. Portion of real property that can be used for academic purposes.

- G. If the School Facilities Board Staff recommendation is to authorize the district to accept the donation, the Staff shall prepare a recommended 20 percent distribution amount. The 20 percent distribution recommendation will be based on the fair market value of the real property proposed for donation that is usable for academic purposes.
- H. The Board may waive or modify the requirements of this Section for good cause.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-505. Constructing Bond-Funded Schools on Land Funded by the School Facilities Board**

- A. A school district that acquires land by sale or lease pursuant to A.R.S. § 15-2041 may construct a school facility on that land using Class A bonds. The square footage of the new facility shall be included in the gross square footage of the school district for purposes of determining needs for additional square footage and building renewal distributions.
- B. A school district that acquires land by sale or lease pursuant to A.R.S. § 15-2041 may construct a school facility on that land using Class B bonds provided that the school district agrees in writing that when the school district qualifies for a new school funded by the School Facilities Board that the School Facilities Board will not provide funding for the lease or purchase of an additional site for that school. The square footage of the new facility constructed with Class B bond monies shall not be included in the gross square footage of the school district for purposes of determining needs for additional square footage and building renewal distributions.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-506. Providing Technical Assistance in the Form of Project Management**

- A. A school district that does not have the experience or resources to successfully oversee a new school construction project may request technical support from the Board pursuant to A.R.S. § 15-2002(13) in the form of project management services.
- B. The Executive Director may approve the project management request. Should the Executive Director deny the request, the school district has the right to appeal the decision to the Board.
- C. The cost of the project management shall be made a part of the overall cost of the new school, and those funds shall be derived from the total allocation for the project provided by the School Facilities Board. Should the allocation of funds that the district receives pursuant to A.R.S. § 15-2041 satisfy the base cost of the new school plus the cost of the project man-

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agement, then the Board shall not provide any additional funds for project management services.

- D. If the school district's request for project management services is approved, the school district shall agree to reimburse the Board from its allocated funds for the cost of any independent contractors that the Board uses to provide the project management services.
- E. The Board may provide the school district with monies to pay for the project management services in addition to the monies the school district receives pursuant to A.R.S. § 15-2041 provided:
  1. The school district demonstrates that the monies it receives pursuant to A.R.S. § 15-2041 are not sufficient to build a school that meets the building adequacy guidelines and pay the fees for the project management; and
  2. The school district demonstrates in writing to the Board's satisfaction that the school district does not have the experience or resources necessary to successfully complete the new school construction project.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

- R7-6-507. **Reserved**
- R7-6-508. **Reserved**
- R7-6-509. **Reserved**
- R7-6-510. **Reserved**
- R7-6-511. **Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 6. CONTINGENCY FUNDS****R7-6-601. Allocation and Use of Contingency Monies**

- A. A sum equal to a percentage of the construction bid shall be set aside as a contingency fund to cover the cost of unknown conditions that could arise during construction. The School Facilities Board shall set aside an amount equal to five percent of the base cost for new construction and ten percent of the base cost for renovation of a structure or system replacement to cover these potential costs. Contingency funds are not part of the construction budget and are to be used only if needed. For deficiency corrections projects, any contingency funds which are not used shall be returned to the deficiency corrections fund. For projects funded by the new school facilities fund, any contingency funds which are not used may be used by the school district in accordance with A.R.S. § 15-2041.
- B. The mechanism that is used to spend contingency funds during construction is a "change order." There are three types of situations that generally require a change order:
  1. An unknown condition that was not determined until after construction was started and that requires a change, deletion or addition to the construction contract.
  2. The school district has determined to change the scope of work and add to or delete from the contract.
  3. A change is required to correct a discrepancy between what the contractor bid and what the architect and owner intended. This type of change order could be determined an "error or omission" on the part of the architect. If so,

the owner should pursue the architect's error and omissions insurance to recover the costs of the required change.

- C. Change orders can be additive or subtractive to the construction contract and both should be used. All changes in the scope of the contract and the contract documents should be considered potential change orders. Change order should not be used to correct conditions known prior to or discovered during the bid process. These should be addendum items and made part of the bid.
- D. The following conditions apply to the use of all contingency monies allocated to a specific project approved by the School Facilities Board. If the district wishes to issue change orders that do not comply with these rules, the associated costs shall be accounted for separately and not considered part of the approved project. In other words, they would need to be paid out of separate monies and would not be considered part of the approved project, even though they might be included in the same basic contract. These costs would be paid for using local funds.
  1. The school district may use contingency monies only to cover change orders that are to correct unknown conditions.
  2. Contingency funds may not be used to cover change orders for the other two types of situations discussed in subsection (B) above: the district has determined to change the scope of work during construction by adding components, or a change is required to correct a discrepancy created by the architect that could be considered an error or omission by the architect.
  3. For deficiency correction projects performed pursuant to A.R.S. § 15-2021 only, the Executive Director shall have the discretion to authorize the use of contingency funds for expansion of scope, to accommodate low budget estimates, and for all other project related costs.
  4. Contingency monies shall not be used to pay for "bid add alternates." These items are not part of the final approved project.
- E. A school district whose deficiency correction projects are combined with the deficiency correction projects of one or more additional school districts pursuant to R7-6-401 shall have the contingency amount included as a percentage of the overall set of projects that have been grouped together for such purposes. The Executive Director shall have the discretion to use, transfer, and/or combine the contingency amounts for any projects within such a group to any other project within the group of projects. The Executive Director's adjustment authority pursuant to R7-6-401 shall be considered as a percentage or sum of the overall group of projects.
- F. The Board may modify or waive the requirements of this Section for good cause.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND****R7-6-701. Application**

- A. The provisions of Article 2 apply to the Arizona State Schools for the Deaf and Blind (ASDB), created under A.R.S. Title 15, Chapter 11, except as specified in this Article.

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- B. When a provision of Article 2 refers to a school district, the reference shall be interpreted to mean the ASDB governing board.
- C. If there is a conflict between a provision of this Chapter and a student's IEP, the IEP controls.
- D. Board funding for ASDB projects is subject to legislative authorization.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

- R7-6-702. **Reserved**
- R7-6-703. **Reserved**
- R7-6-704. **Reserved**
- R7-6-705. **Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

- R7-6-706. **Reserved**
- R7-6-707. **Reserved**
- R7-6-708. **Reserved**
- R7-6-709. **Reserved**

**R7-6-710. Classroom Square Footage Requirements for the ASDB**

- A. To accommodate the needs of ASDB students, the classroom square footage requirements of the ASDB differ from those of other school facilities as follows.
- B. Minimum cumulative classroom square footage:
  1. For preschool students with disabilities through kindergarten: 150 square feet per student; and
  2. For grades one through 12: 100 square feet per student.
- C. Learning and technology center:
  1. For an elementary school facility that serves at least 150 students, the greater of 1000 square feet or the square footage equal to 325 square feet per student for 10 percent of the student body; and
  2. For a middle or junior high or high school facility that serves at least 150 students, the greater of 1200 square feet or the square footage equal to 275 square feet per student for 10 percent of the student body.
- D. Multiuse space capable of being used for student assembly:
  1. Large enough to accommodate one-half of the student body plus parents and staff,
  2. The same size or larger than an average classroom at the ASDB, and
  3. At least 50 square feet multiplied by one-third of the student body in addition to the square footage of open aisle and exiting path space.
- E. Science facilities:
  1. For grades five through eight, no classroom square footage is required other than as specified in R7-6-710; and

2. For grades nine through 12, 10 square feet per student is required for practical instruction in science.
- F. Art facilities: For students in grades seven through 12, 10 square feet per student is required for art education.
  - G. Career and technical education facilities: For students in grades seven through 12, 40 square feet per student is required for career and technical education programs.
  - H. Physical education and comprehensive health program facilities: 125 square feet per student of indoor space is required for physical education and comprehensive health programs.
  - I. The spaces designated under subsections (C) through (H) shall not be smaller than the average classroom at the ASDB.
  - J. The spaces designated under subsections (E) through (H) shall not be:
    1. Included in the classroom square footage requirement; or
    2. Used for instruction other than the specialty instruction specified.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-711. Classroom Fixtures and Equipment**

- A. Each general and specialty classroom of the ASDB shall contain:
  1. Two work surfaces and seating for each student. The work surfaces and seat shall accommodate the special needs of a student who is deaf, blind, or has multiple disabilities; and
  2. One work surface and seat for the teacher and any other individual regularly assigned to the classroom.
- B. The ASDB shall provide the equipment and supplies necessary to meet the IEP of all students.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-712. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-713. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-714. Classroom Acoustics**

The sustained background sound level of the learning and technology center, multiuse space, and each general, science, and art classroom of the ASDB shall be less than 35 decibels.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by

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final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-715. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-716. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-717. Reserved****R7-6-718. Reserved****R7-6-719. Reserved****R7-6-720. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-721. Equipment for Learning and Technology Center**  
The learning and technology center of each ASDB campus shall have equipment defined in each student's IEP or as defined in R7-6-221, as appropriate.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-722. Reserved****R7-6-723. Reserved****R7-6-724. Reserved****R7-6-725. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-726. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-727. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-728. Reserved****R7-6-729. Reserved****R7-6-730. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-731. Reserved****R7-6-732. Reserved****R7-6-733. Reserved****R7-6-734. Reserved****R7-6-735. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-736. Reserved****R7-6-737. Reserved****R7-6-738. Reserved****R7-6-739. Reserved****R7-6-740. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-741. Reserved****R7-6-742. Reserved****R7-6-743. Reserved****R7-6-744. Reserved****R7-6-745. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-746. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by

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final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-747. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-748. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-749. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-750. Equipment for Physical Education**

A school facility shall have one hardscape equivalent in size to an outdoor basketball court per 300 students to a maximum of three hardscapes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-751. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-752. Reserved****R7-6-753. Reserved****R7-6-754. Reserved****R7-6-755. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-756. Two-way Internal Communication System**

A school facility shall have a two-way internal communication system between a central location and each general and specialty classroom, the learning and technology center, and the cafeteria. The internal communication system shall have both audio and video capabilities.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-757. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-758. Administrative Space**

- A. A school facility shall have space for use by the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes, a space between 150 square feet and 7.5 square feet per student, as reasonable for the size of the anticipated student body, is required.
- B. A school facility shall have a dedicated space in which to isolate a sick student from the other students. This space shall be accessible to a restroom and large enough to accommodate one cot per 50 students, with a maximum of eight cots.
- C. A school facility shall have work space available to the faculty that is in addition to any work space in or near a classroom. A space between 150 square feet and one square foot per student, as reasonable for the size of the anticipated student body, is required. The faculty work space may be in multiple locations throughout the school facility and may have more than one function.
- D. A 9,500 square foot facility used for the administration of the Arizona School for the Deaf and Blind shall also be available.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-759. Reserved****R7-6-760. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-761. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-762. Reserved****R7-6-763. Reserved****R7-6-764. Reserved****R7-6-765. Repealed**

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**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-766. Reserved**

**R7-6-767. Reserved**

**R7-6-768. Reserved**

**R7-6-769. Reserved**

**R7-6-770. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-771. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-772. Reserved**

**R7-6-773. Reserved**

**R7-6-774. Reserved**

**R7-6-775. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-776. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-777. Reserved**

**R7-6-778. Reserved**

**R7-6-779. Reserved**

**R7-6-780. Student Boarding Space**

Each ASDB campus shall provide safe and sanitary boarding for resident ASDB students as follows:

1. A student dormitory consisting of a shared living area and kitchen and a bedroom for each student in kindergarten through grade 12. The student dormitory shall provide at least 400 square feet of space per student, and
2. One laundry room for every student dormitory. The laundry room shall provide at least 100 square feet of space for every eight resident students.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-781. Facility Requirements for ASDB Programs**

Each ASDB campus shall provide the following minimum square footage of space to support the ASDB program specified:

1. Audiology program. Five square feet per deaf student and one square foot per blind student;
2. Auditory training and speech therapy program. Three square feet per deaf student and one square foot per blind student;
3. Low-vision program. Three square feet per student;
4. Occupational and physical therapy program. Five square feet per student with a minimum of 1,500 square feet; and
5. Orientation and mobility program. Six square feet per blind student.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-782. Student Health Center**

Each ASDB boarding campus shall have space for a student health center. The student health center shall have at least 13 square feet of space per student.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-783. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an immediate effective date of November 3, 2020 (Supp. 20-4).

**R7-6-784. Reserved**

**R7-6-785. Expired**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 3252, effective June 30, 2005 (05-3).

**R7-6-786. Reserved**

**R7-6-787. Reserved**

**R7-6-788. Reserved**

**R7-6-789. Reserved**

**R7-6-790. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Repealed by final expedited rulemaking at 26 A.A.R. 2963, with an

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immediate effective date of November 3, 2020 (Supp. 20-4).

**ARTICLE 8. REPEALED**

**R7-6-801. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 9. REPEALED**

**R7-6-901. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-902. Reserved**

**R7-6-903. Reserved**

**R7-6-904. Reserved**

**R7-6-905. Reserved**

**R7-6-906. Reserved**

**R7-6-907. Reserved**

**R7-6-908. Reserved**

**R7-6-909. Reserved**

**R7-6-910. Reserved**

**R7-6-911. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-912. Reserved**

**R7-6-913. Reserved**

**R7-6-914. Reserved**

**R7-6-915. Reserved**

**R7-6-916. Reserved**

**R7-6-917. Reserved**

**R7-6-918. Reserved**

**R7-6-919. Reserved**

**R7-6-920. Reserved**

**R7-6-921. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-922. Reserved**

**R7-6-923. Reserved**

**R7-6-924. Reserved**

**R7-6-925. Reserved**

**R7-6-926. Reserved**

**R7-6-927. Reserved**

**R7-6-928. Reserved**

**R7-6-929. Reserved**

**R7-6-930. Reserved**

**R7-6-931. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-932. Reserved**

**R7-6-933. Reserved**

**R7-6-934. Reserved**

**R7-6-935. Reserved**

**R7-6-936. Reserved**

**R7-6-937. Reserved**

**R7-6-938. Reserved**

**R7-6-939. Reserved**

**R7-6-940. Reserved**

**R7-6-941. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 10. REPEALED**

**R7-6-1001. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1002. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

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**R7-6-1003. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1004. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 11. REPEALED****R7-6-1101. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 12. REPEALED****R7-6-1201. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 13. REPEALED****R7-6-1301. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1302. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the

Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 14. REPEALED****R7-6-1401. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1402. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 15. REPEALED****R7-6-1501. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 16. REPEALED****R7-6-1601. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**EXHIBIT A. REPEALED****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Exhibit A repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

As of February 1, 2022

41-5701. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the school facilities oversight board.
2. "Division" means the division of school facilities within the department of administration.

41-5701.01. Division of school facilities

- A. The division of school facilities is established within the department of administration.
- B. The director of the department of administration shall appoint the director of the division.

41-5701.02. School facilities oversight board; members; conflict of interest; violation; classification; change orders; notification

A. The school facilities oversight board is established within the division consisting of the following members who are appointed by the governor pursuant to section 38-211 in such a manner as to provide for approximate geographic balance and approximate balance between public and private members:

1. One member who represents a statewide organization of taxpayers.
2. One member who is a registered professional architect.
3. One member with knowledge and experience in school facilities management in a public school system.
4. One member who is a registered professional engineer.
5. Two members who are owners or officers of a private construction company, who have knowledge of and experience in constructing large commercial or government buildings and whose businesses do not include school construction.
6. One person who represents the business community.

B. In addition to the members appointed pursuant to subsection A of this section:

1. The superintendent of public instruction or the superintendent's designee shall serve as an advisory nonvoting member of the school facilities oversight board.
2. The director of the department of administration or the director's designee shall serve as an advisory nonvoting member of the school facilities oversight board.

C. Members of the school facilities oversight board serve four-year terms. The school facilities oversight board shall meet as often as the members deem necessary. A majority of the members constitutes a quorum for the transaction of business.

D. The unexcused absence of a member for more than three consecutive meetings is justification for removal by a majority vote of the board. If the member is removed, notice shall be given of the removal pursuant to section 38-292.

E. The governor shall fill a vacancy by appointment of a qualified person as provided in subsection A of this section.

F. Members of the board who are employed by government entities are not eligible to receive compensation. Members of the board who are not employed by government entities are entitled to payment of \$150 for each meeting attended, prorated for partial days spent for each meeting, up to \$2,500 each year. All members are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2. These expenses and the payment of compensation are payable to a member from monies appropriated to the board from the new school facilities fund.

G. Members and employees of the school facilities oversight board are subject to title 38, chapter 3, article 8.

H. In addition to the requirements prescribed in subsection G of this section, employees of the school facilities oversight board may not have a direct or indirect financial interest in any property purchased, facility constructed or contract financed with monies made available by the board or any other public monies. A person who knowingly violates this subsection is guilty of a class 1 misdemeanor.

I. The division shall establish policies and procedures relating to building renewal grant change orders that include the following:

1. The division shall approve or reject a change order within two business days.
2. If a school district approves work referenced in a change order before the division approves the change order, the school district is responsible for the cost and construction of the project.

J. The division shall establish policies and procedures to ensure that it notifies school districts in a uniform manner and at least annually of the services and funding that are available from the board and the division for facility construction, renovation and repair projects. The division shall update and post this information on its website on or before July 1 of each year.

K. The division shall establish and maintain a list of the persons who are responsible for facilities management at each school district in this state. A school district shall promptly notify the division of any change to persons who are responsible for facilities management at that school district. The division shall update and post this information on its website on or before July 1 of each year.

L. Members of the school facilities oversight board may not solicit, accept or provide gifts that are prohibited by state law.

41-5702. Powers and duties; staffing; reporting requirements

A. The division shall:

1. Assess school facilities and equipment deficiencies and approve the distribution of grants as appropriate.
2. Maintain a database of school facilities to allow for the administration of the new school facilities formula and the building renewal grant fund. The facilities listed in the database must include all buildings that are owned by school districts. The division shall ensure that the database is updated on at least an annual basis. Each school district shall report to the division not later than September 1 of each year information as required by the division to administer the building renewal grant fund and by the school facilities oversight board to compute new school facilities formula distributions, including the nature and cost of major repairs, renovations or physical improvements to or replacement of building

systems or equipment that were made in the previous year and that were paid for either with local monies or monies provided from the building renewal grant fund. Each school district shall report any school or school buildings that have been closed, that are vacant or partially used pursuant to section 15-119 and that have been leased to another entity or that operate as a charter school. The division shall develop guidelines and definitions for the reporting prescribed in this paragraph and may review or audit the information, or both, to confirm the information submitted by a school district. Notwithstanding any other provision of this chapter, if a school district converts space that is listed in the database maintained pursuant to this paragraph to space that will be used for administrative purposes, the school district is responsible for any costs associated with converting, maintaining and replacing that space. If a building is significantly upgraded or remodeled, the division shall adjust the age of that school facility in the database as follows:

(a) Determine the building capacity value as follows:

(i) Multiply the student capacity of the building by the per pupil square foot capacity established by section 41-5741.

(ii) Multiply the product determined in item (i) of this subdivision by the cost per square foot established by section 41-5741.

(b) Divide the cost of the renovation by the building capacity value determined in subdivision (a) of this paragraph.

(c) Multiply the quotient determined in subdivision (b) of this paragraph by the currently listed age of the building in the database.

(d) Subtract the product determined in subdivision (c) of this paragraph from the currently listed age of the building in the database, rounded to the nearest whole number. If the result is a negative number, use zero.

3. Inspect, contract with a third party to inspect or certify school district self-inspections of school buildings at least once every five years to ensure compliance with the building adequacy standards prescribed in section 41-5711, the accuracy of the reporting of vacant and partially used buildings pursuant to this subsection and routine preventive maintenance guidelines as prescribed in this section with respect to constructing new buildings and maintaining existing buildings. The division shall randomly select twenty school districts every thirty months and provide for them to be inspected pursuant to this paragraph.

4. Develop prototypical elementary and high school designs. The division shall review the design differences between the schools with the highest academic productivity scores and the schools with the lowest academic productivity scores. The division shall also review the results of a valid and reliable survey of parent quality rating in the highest performing schools and the lowest performing schools in this state. The survey of parent quality rating shall be administered by the department of education. The division shall consider the design elements of the schools with the highest academic productivity scores and parent quality ratings in the development of elementary and high school designs. The division shall develop separate school designs for elementary, middle and high schools with varying pupil capacities.

5. Develop application forms, reporting forms and procedures to carry out the requirements of this article, including developing and implementing policies and procedures to:

(a) Ensure that the division and the school facilities oversight board, as applicable, notify school districts in a uniform manner of the services and funding available for school districts from the board or the division for facility construction, renovation and repair projects. The policies and procedures shall

require the division and the board to provide at least one annual communication to school districts in a manner prescribed by the division and shall require each school district to develop and maintain a list of persons who are responsible for facilities management at that school district.

(b) Establish a project eligibility assessment for all projects submitted for building renewal grant funding or emergency deficiencies correction funding, including establishing standardized criteria for project eligibility. Before the division formally approves a project, the staff of the division may review the costs and scope of the proposed project with persons and entities that have submitted bids on the project.

(c) Ensure that the division and the school facilities oversight board maintain standardized documentation of all projects submitted to the board and the division for consideration to receive services or a financial award from the board or the division. The board and the division shall maintain standardized documentation of any project awarded monies by the board or the division, including records of payments to school districts in a manner prescribed by the division. The standardized documentation shall include the following as part of the eligibility determination criteria:

(i) Whether the problem that the proposed project intends to address caused the building or facility to fall below the minimum school facility adequacy guidelines prescribed in section 41-5711.

(ii) Whether the school district performed the routine preventive maintenance required by section 41-5731 on the building or facility.

(d) Require a school district to submit contact information for each proposed project, including the name, email address and telephone number of persons who are responsible for facilities management at the school district.

(e) Require a school district to provide justification for each proposed project, including all of the following:

(i) The school district's use or planned use of the facility.

(ii) A detailed description of the problem and the school district's recommended solution.

(iii) Any completed professional study regarding the proposed project.

(iv) Any citation or report from government entities.

(v) The estimated cost of the proposed project, with documentation.

(vi) The project category.

(vii) A description of any local funding that will be used for the proposed project.

(viii) Documentation on associated insurance coverage, if applicable.

(f) Require that an initial application not be considered complete until all necessary information is submitted.

(g) Allow a school district to submit an incomplete application and request technical assistance from the staff of the board if the school district is unable to provide sufficient information in the initial application.

(h) If applicable, require that a complete application be received by the board at least fifteen business days before the next regularly scheduled board meeting in order for the application to be considered at that

meeting. An incomplete application may be considered at that meeting if both the staff of the board and the superintendent of the school district deem the project critical.

(i) Allow the staff of the board or the division, as applicable, to notify a school district in writing before review by the board or division that the proposed project does not meet eligibility criteria prescribed in this chapter. The written notification shall include documentation to support the determination that the proposed project does not meet the eligibility criteria prescribed in this chapter. The school district may directly appeal the determination of ineligibility to the director of the division. The school district may directly appeal the director's determination of ineligibility to the board.

(j) Prohibit the staff of the board or division from requesting that a school district withdraw a project application from review by the board or division if the initial review determines that the proposed project may be ineligible for monies pursuant to this chapter.

6. Submit electronically an annual report on or before December 15 to the speaker of the house of representatives, the president of the senate, the superintendent of public instruction, the secretary of state and the governor that includes the following information:

(a) A detailed description of the amount of monies distributed by the division under this chapter in the previous fiscal year.

(b) A list of each capital project that received monies from the division under this chapter during the previous fiscal year, a brief description of each project that was funded and a summary of the division's reasons for distributing monies for the project.

(c) A summary of the findings and conclusions of the building maintenance inspections conducted pursuant to this article during the previous fiscal year.

(d) A summary of the findings of common design elements and characteristics of the highest performing schools and the lowest performing schools based on academic productivity, including the results of the parent quality rating survey. For the purposes of this subdivision, "academic productivity" means academic year advancement per calendar year as measured with student-level data using the statewide nationally standardized norm-referenced achievement test.

7. On or before December 1 of each year, report electronically to the joint committee on capital review the amounts necessary to fulfill the requirements of section 41-5721 for the following three fiscal years. In developing the amounts necessary for this report, the division shall use the most recent average daily membership data available. On request from the division, the department of education shall make available the most recent average daily membership data for use in calculating the amounts necessary to fulfill the requirements of section 41-5721 for the following three fiscal years. The division shall provide copies of the report to the president of the senate, the speaker of the house of representatives and the governor.

8. On or before June 15 of each year, submit electronically detailed information regarding demographic assumptions and a proposed construction schedule for individual projects approved in the current fiscal year and expected project approvals for the upcoming fiscal year to the joint committee on capital review for its review. A copy of the report shall also be submitted electronically to the governor's office of strategic planning and budgeting. The joint legislative budget committee staff, the governor's office of strategic planning and budgeting staff and the division staff shall agree on the format of the report.

9. Every two years, provide school districts with information on improving and maintaining the indoor environmental quality in school buildings.

10. Adopt rules regarding the validation of adjacent ways projects pursuant to paragraph 11 of this subsection.

11. Validate proposed adjacent ways projects that are submitted by school districts as prescribed in section 15-995 pursuant to rules adopted by the division under paragraph 10 of this subsection.

12. Submit a monthly report to the school facilities oversight board that details each adjacent ways project validated pursuant to paragraph 11 of this subsection.

13. Brief the joint committee on capital review at least once each year regarding the use of monies from all of the following:

(a) The emergency deficiencies correction fund established by section 41-5721.

(b) The building renewal grant fund established by section 41-5731.

(c) The new school facilities fund established by section 41-5741.

B. The school facilities oversight board or the division may contract for the following services in compliance with the procurement practices prescribed in chapter 23 of this title:

1. Private services.

2. Construction project management services.

3. Assessments for school buildings to determine if the buildings have outlived their useful life pursuant to section 41-5741, subsection G or have been condemned.

4. Services related to land acquisition and development of a school site.

C. The school facilities oversight board shall:

1. Review and approve student population projections submitted by school districts to determine to what extent school districts are entitled to monies to construct new facilities pursuant to section 41-5741. The board shall make a final determination within five months after receiving an application from a school district for monies from the new school facilities fund.

2. Certify that plans for new school facilities meet the building adequacy standards prescribed in section 41-5711.

3. Review and approve or reject requests submitted by school districts to take actions pursuant to section 15-341, subsection G.

4. On or before December 15 of each year electronically submit a report to the speaker of the house of representatives, the president of the senate, the superintendent of public instruction, the secretary of state and the governor that includes the following information:

(a) A detailed description of the amount of monies the board distributed under this chapter in the previous fiscal year.

(b) A list of each capital project that received monies from the board under this chapter during the previous fiscal year, a brief description of each project that was funded and a summary of the board's reasons for distributing monies for the project.

(c) A summary of the findings and conclusions of the building maintenance inspections conducted pursuant to this article during the previous fiscal year.

5. On or before December 1 of each year, electronically report to the joint committee on capital review the amounts necessary to fulfill the requirements of section 41-5741 for the following three fiscal years. In developing the amounts necessary for this report, the board shall use the most recent average daily membership data available. On request from the board, the department of education shall make available the most recent average daily membership data for use in calculating the amounts necessary to fulfill the requirements of section 41-5741 for the following three fiscal years. The board shall provide copies of the report to the president of the senate, the speaker of the house of representatives and the governor.

6. Adopt minimum school facility adequacy guidelines to provide the minimum quality and quantity of school buildings and the facilities and equipment necessary and appropriate to enable pupils to achieve the educational goals of the Arizona state schools for the deaf and the blind. The board shall establish minimum school facility adequacy guidelines applicable to the Arizona state schools for the deaf and the blind.

7. On or before June 15 of each year, electronically submit to the joint committee on capital review for its review detailed information regarding demographic assumptions, a proposed construction schedule and new school construction cost estimates for individual projects approved in the current fiscal year and expected project approvals for the upcoming fiscal year. A copy of the report shall also be submitted electronically to the governor's office of strategic planning and budgeting. The joint legislative budget committee staff, the governor's office of strategic planning and budgeting staff and the board staff shall agree on the format of the report.

8. On or before December 31 of each year, report to the joint legislative budget committee on all class B bond approvals by school districts in that year. Each school district shall report to the board on or before December 1 of each year information required by the board for the report prescribed in this paragraph.

D. The director of the division shall serve as the director of the school facilities oversight board. The director may hire and fire necessary staff subject to chapter 4, article 4 of this title and as approved by the legislature in the budget. The staff of the school facilities oversight board is exempt from chapter 4, articles 5 and 6 of this title. The director:

1. Shall analyze applications for monies submitted to the board and to the division by school districts.
2. Shall assist the board and the division in developing forms and procedures for distributing and reviewing applications and distributing monies to school districts.
3. May review or audit, or both, the expenditure of monies by a school district for deficiencies corrections and new school facilities.
4. Shall assist the board and the division in preparing the board's and division's annual reports.
5. Shall research and provide reports on issues of general interest to the board and the division.
6. May aid school districts in developing reasonable and cost-effective school designs in order to avoid statewide duplicated efforts and unwarranted expenditures in the area of school design.
7. May assist school districts in facilitating the development of multijurisdictional facilities.
8. Shall assist the board and the division in any other appropriate matter or method as directed by the division and the members of the board.

9. Shall establish procedures to ensure compliance with the notice and hearing requirements prescribed in section 15-905. The notice and hearing procedures adopted by the board shall include the requirement, with respect to the board's consideration of any application filed after July 1, 2001 or after December 31 of the year in which the property becomes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport or ancillary military facility, that the military airport receive notification of the application by first class mail at least thirty days before any hearing concerning the application.

10. May expedite any request for monies in which the local match was not obtained for a project that received preliminary approval by the state board for school capital facilities.

11. Shall expedite any request for monies in which the school district governing board submits an application that shows an immediate need for a new school facility.

12. Shall determine administrative completeness within one month after receiving an application from a school district for monies from the new school facilities fund.

13. Shall provide technical support to school districts as requested by school districts in connection with constructing new school facilities and maintaining existing school facilities and may contract directly with construction project managers pursuant to subsection B of this section. This paragraph does not restrict a school district from contracting with a construction project manager using district or state resources.

E. When appropriate, the board and the division shall review and use the statewide school facilities inventory and needs assessment conducted by the joint committee on capital review and issued in July, 1995.

F. The school facilities oversight board shall contract with one or more private building inspectors to complete an initial assessment of school facilities and equipment and shall inspect each school building in this state at least once every five years to ensure compliance with section 41-5711. A copy of the inspection report, together with any recommendations for building maintenance, shall be provided to the school facilities oversight board and the governing board of the school district.

G. The division or the board, as applicable, may consider appropriate combinations of facilities or uses in assessing and curing deficiencies pursuant to subsection A, paragraph 1 of this section and in certifying plans for new school facilities pursuant to subsection C, paragraph 2 of this section.

H. The board shall not award any monies to fund new facilities that are financed by A bonds that are issued by the school district.

I. The board or the division shall not distribute monies to a school district for replacing or repairing facilities if the costs associated with the replacement or repair are covered by insurance or a performance or payment bond.

J. The division may contract for construction services and materials that are necessary to correct existing deficiencies in school district facilities. The division may procure the construction services necessary pursuant to this subsection by any method, including construction-manager-at-risk, design-build, design-bid-build or job-order-contracting as provided by chapter 23 of this title. The construction planning and services performed pursuant to this subsection are exempt from section 41-791.01.

K. The division may enter into agreements with school districts to allow division staff and contractors access to school property for the purposes of performing the construction services necessary pursuant to subsection J of this section.

L. Each school district shall develop routine preventive maintenance guidelines for its facilities. The guidelines shall include plumbing systems, electrical systems, heating, ventilation and air conditioning systems, special equipment and other systems and for roofing systems shall recommend visual inspections performed by district staff for signs of structural stress and weakness. The guidelines shall be submitted to the division for review and approval. If on inspection by the division it is determined that a school district facility was inadequately maintained pursuant to the school district's routine preventive maintenance guidelines, the school district shall return the building to compliance with the school district's routine preventive maintenance guidelines.

M. The board and the division may temporarily transfer monies, or, if applicable, direct the division to transfer monies, between the emergency deficiencies correction fund established by section 41-5721 and the new school facilities fund established by section 41-5741 if all of the following conditions are met:

1. The transfer is necessary to avoid a temporary shortfall in the fund into which the monies are transferred.
2. The transferred monies are restored to the fund where the monies originated as soon as practicable after the temporary shortfall in the other fund has been addressed.
3. The board and the division report to the joint committee on capital review the amount of and the reason for any monies transferred.

N. After notifying each school district, and if a written objection from the school district is not received by the board or the division within thirty days after the notification, the board or the division may access public utility company records of power, water, natural gas, telephone and broadband usage to assemble consistent and accurate data on utility consumption at school facilities to determine the effectiveness of facility design, operation and maintenance measures intended to reduce energy and water consumption and costs. Any public utility that provides service to a school district in this state shall provide the data requested by the board or the division pursuant to this subsection.

O. The division or the board shall not require a common school district that provides instruction to pupils in grade nine to obtain approval from the division or the board to reconfigure its school facilities. A common school district that provides instruction to pupils in grade nine is not entitled to additional monies from the division or the board for facilities to educate pupils in grade nine.

P. A school district may appeal the denial of a request for monies pursuant to this chapter or any other appealable agency action by the division or the board pursuant to chapter 6, article 10 of this title. For the purposes of this subsection, "appealable agency action" has the same meaning prescribed in section 41-1092.

#### 41-5703. School facilities oversight board lease-to-own; fund; expiration

A. In order to fulfill the requirements of section 41-5741, the board may acquire school facilities for the use of one or more school districts by entering into one or more lease-to-own transactions in accordance with this section. For the purposes of this section, providing school facilities includes land acquisition, related infrastructure, fixtures, furnishings, equipment and costs of the lease-to-own transaction. The board may provide monies to provide school facilities in part pursuant to section 41-5741 and in part through a lease-to-own transaction.

B. A lease-to-own transaction may provide for:

1. The ground lease of the land for the facilities to a private entity for the term of the lease-to-own transaction or for a term of up to one and one-half times the term of the lease-to-own transaction, subject

to earlier termination on completion of performance of the lease-to-own agreement. The ground lessor may either be the school district or the board, whichever holds title to the land.

2. The lease of the completed school facilities by a private entity to the board for an extended term of years pursuant to a lease-to-own agreement.

3. The sublease of the completed school facilities by the board to the school district during the term of the lease-to-own agreement. The sublease shall provide for the use, maintenance and operation of the school facilities by the school district and for the transfer of ownership of the school facilities to the school district on completion of performance of the lease-to-own agreement.

4. The option for the board's purchase of the school facilities and transfer of ownership of the school facilities to the school district before the expiration of the lease-to-own agreement.

5. The services of trustees, financial advisors, paying agents, transfer agents, underwriters, lawyers and other professional service providers, credit enhancements or liquidity facilities and all other services considered necessary by the board in connection with the lease-to-own transaction, and related agreements and arrangements including arrangements for the creation and sale of certificates of participation evidencing proportionate interests in the lease payments to be made by the board pursuant to the lease-to-own agreement.

C. The sublease of the school facilities to the school district is subject to this section and to the provisions of the lease-to-own agreement. Neither a ground lease by the school district as lessor nor a sublease of the school facilities to the school district is required to be authorized by a vote of the school district electors. A ground lease is not subject to any limitations or requirements applicable to leases or lease-purchase agreements pursuant to section 15-342 or any other section of title 15 or this chapter.

D. Any school facility that is constructed through a lease-to-own agreement shall meet the minimum building adequacy standards set forth in section 41-5711.

E. School districts may use local monies to exceed the minimum adequacy standards and to build athletic fields and any other capital project for leased-to-own facilities.

F. The board shall include any square footage of new school facilities constructed through lease-to-own agreements in the computations prescribed in section 41-5711.

G. The lease-to-own fund is established consisting of monies appropriated by the legislature. The board shall administer the fund and distribute monies in the fund to make payments pursuant to lease-to-own agreements entered into by the board pursuant to this section, to make payments to or for the benefit of school districts pursuant to local lease-to-own agreements entered into by school districts pursuant to section 41-5704 and to pay costs considered necessary by the board in connection with lease-to-own transactions and local lease-to-own transactions. Payments by the board pursuant to a lease-to-own agreement or local lease-to-own agreement shall be made only from the lease-to-own fund. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the lease-to-own fund.

H. A lease-to-own agreement entered into by the board pursuant to this section shall provide that:

1. At the completion of the lease-to-own agreement, ownership of the school facilities and land associated with the lease-to-own agreement shall be transferred to the school district as specified in the agreement.

2. The obligation of the board to make any payment under the lease-to-own agreement is a current expense, payable exclusively from appropriated monies, and is not a general obligation indebtedness of

this state or the board. The obligation of a school district to make expenditures under a sublease pursuant to subsection B, paragraph 3 of this section is a current expense, payable exclusively from budgeted monies, and is not a general obligation indebtedness of the school district.

3. If the legislature fails to appropriate monies or the board fails to allocate such monies for any periodic payment or renewal term of the lease-to-own agreement, the lease-to-own agreement terminates at the end of the current term and this state and the board are relieved of any subsequent obligation under the agreement and the school district is relieved of any subsequent obligation under the sublease.

4. The lease-to-own agreement shall be reviewed and approved by the attorney general before the agreement may take effect.

5. Before the agreement takes effect and after review by the attorney general, the project or projects related to the agreement shall be submitted for review by the joint committee on capital review.

I. The board may covenant to use its best efforts to budget, obtain, allocate and maintain sufficient appropriated monies to make payments under a lease-to-own agreement, but the lease-to-own agreement shall acknowledge that appropriating state monies is a legislative act and is beyond the control of the board or of any other party to the lease-to-own agreement.

J. The land and the school facilities on the land are exempt from taxation during the term of the lease-to-own agreement and during construction and subsequent occupancy by the school district pursuant to the sublease.

K. The powers prescribed in this section are in addition to the powers conferred by any other law. Without reference to any other provision of title 15, this chapter or any other law, this section is authority for the completion of the purposes prescribed in this section for the board to provide school facilities for use by school districts through lease-to-own transactions pursuant to this section without regard to the procedure required by any other law. Except as otherwise provided in this section, the provisions of title 15 and this chapter that relate to the matters contained in this section are superseded because this section is the exclusive law on these matters.

L. The board shall not enter into lease-to-own transactions, including any refinancings or refundings, pursuant to this section from and after May 15, 2006.

#### 41-5704. Local lease-to-own by school districts; expiration

A. In order to fulfill the requirements of section 41-5741, with the approval of the board, a school district may acquire school facilities by entering into a local lease-to-own transaction in accordance with this section. For purposes of this section, providing school facilities includes land acquisition, related infrastructure, fixtures, furnishings, equipment and costs of the local lease-to-own transaction. The board may provide monies to provide school facilities in part pursuant to section 41-5741 and in part through payments to or for the benefit of a school district for a local lease-to-own transaction.

B. A local lease-to-own transaction may provide for:

1. The ground lease of the land for the facilities to a private entity for the term of the local lease-to-own transaction or for a term of up to one and one-half times the term of the local lease-to-own transaction, subject to earlier termination on completion of performance of the local lease-to-own agreement. The ground lessor may either be the school district or the board, whichever holds title to the land.

2. The lease of the completed school facilities by a private entity to the school district for an extended term of years pursuant to a local lease-to-own agreement. The local lease-to-own agreement shall provide

for the use, maintenance and operation of the school facilities by the school district and for the transfer of ownership of the school facilities to the school district on completion of performance of the local lease-to-own agreement.

3. The option for the school district's purchase of the school facilities and transfer of ownership of the school facilities to the school district before the expiration of the local lease-to-own agreement.

4. The services of trustees, financial advisors, paying agents, transfer agents, underwriters, lawyers and other professional service providers, credit enhancements or liquidity facilities and all other services considered necessary by the school district or the board in connection with the local lease-to-own transaction, and related agreements and arrangements including arrangements for the creation and sale of certificates of participation evidencing proportionate interests in the lease payments to be made by the school district pursuant to the local lease-to-own agreement.

C. Neither a ground lease by the school district as lessor nor a local lease-to-own agreement is required to be authorized by a vote of the school district electors. A ground lease is not subject to any limitations or requirements applicable to leases or lease-purchase agreements pursuant to section 15-342 or any other section of title 15 or this chapter.

D. The board may make payments to or for the benefit of the school district from the lease-to-own fund established by section 41-5703 for the payment of amounts payable under the local lease-to-own agreement.

E. Any school facility that is constructed through a lease-to-own agreement shall meet the minimum building adequacy standards set forth in section 41-5711.

F. School districts may use local monies to exceed the minimum adequacy standards and to build athletic fields and any other capital project for leased-to-own facilities.

G. The board shall include any square footage of new school facilities constructed through lease-to-own agreements in the computations prescribed in section 41-5711.

H. A local lease-to-own agreement entered into by a school district pursuant to this section shall provide that:

1. At the completion of the lease-to-own agreement, ownership of the school facilities and land associated with the lease-to-own agreement shall be transferred to the school district as specified in the agreement.

2. The obligation of the school district to make any payment or expenditure under the local lease-to-own agreement is a current expense, payable exclusively from properly budgeted monies, and is not a general obligation indebtedness of this state, the board or the school district, and that any payment by the board to or for the benefit of the school district from the lease-to-own fund established by section 41-5703 for payments of amounts payable under the local lease-to-own agreement is a current expense, payable exclusively from appropriated monies, and is not a general obligation indebtedness of this state or the board.

3. If the school district fails to properly budget for payments under the local lease-to-own agreement or if the legislature fails to appropriate monies or the board fails to allocate monies for periodic payment to or for the benefit of the school district for payments under the local lease-to-own agreement, the local lease-to-own agreement terminates at the end of the current term and the school district, the board and this state are relieved of any subsequent obligation under the local lease-to-own agreement.

4. The local lease-to-own agreement shall be reviewed and approved by the attorney general before the agreement may take effect.

5. Before the agreement takes effect and after review by the attorney general, the project or projects related to the agreement shall be submitted for review by the joint committee on capital review.

I. The school district may covenant to use its best efforts to budget, obtain, allocate and maintain sufficient monies to make payments under a local lease-to-own agreement, but the local lease-to-own agreement shall acknowledge that budgeting school district monies is a governmental act of the school district governing board that may not be contracted away. The school facilities oversight board is not required to covenant to budget, obtain, allocate or maintain sufficient monies in the lease-to-own fund to make payments to or for the benefit of a school district for payments under a local lease-to-own agreement.

J. The land and the school facilities on the land are exempt from taxation during the term of the local lease-to-own agreement and during construction and subsequent occupancy by the school district pursuant to the local lease-to-own agreement.

K. The powers prescribed in this section are in addition to the powers conferred by any other law. Without reference to any other provision of title 15 or this chapter or any other law, this section is authority for the completion of the purposes prescribed in this section for school districts to provide school facilities through local lease-to-own transactions pursuant to this section without regard to the procedure required by any other law. Except as otherwise provided in this section, the provisions of title 15 or this chapter that relate to the matters contained in this section are superseded because this section is the exclusive law on these matters.

L. School districts shall not enter into lease-to-own transactions, including any refinancings or refundings, pursuant to this section from and after May 15, 2006.

#### 41-5705. Lease-to-own amount; expiration

A. In order to fulfill the requirements of section 41-5741, the board may enter into lease-to-own transactions for up to a maximum of \$200,000,000 in any fiscal year.

B. The board shall not enter into lease-to-own transactions, including any refinancings or refundings, pursuant to this section from and after May 15, 2006.

#### 41-5711. Minimum school facility adequacy requirements; definition

A. The board, as determined and prescribed in this chapter, shall provide funding to school districts for new construction as the number of pupils in the district fills the existing school facilities and requires more pupil space.

B. School buildings in a school district are adequate if all of the following requirements are met:

1. The buildings contain sufficient and appropriate space and equipment that comply with the minimum school facility adequacy guidelines established pursuant to subsection F of this section. The state shall not fund facilities for elective courses that require the school district facilities to exceed minimum school facility adequacy requirements. The board shall determine whether a school building meets the requirements of this paragraph by analyzing the total square footage that is available for each pupil in conjunction with the need for specialized spaces and equipment.

2. The buildings are in compliance with federal, state and local building and fire codes and laws that apply to the particular building, except that a school with an aggregate area of less than five thousand square feet is subject to permitting and inspection by a local fire marshal and is only subject to regulation or inspection by the office of the state fire marshal if the county, city or town in which the school is located does not employ a local fire marshal. An existing school building is not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the building or fire code of the jurisdiction where the building is located.

3. The building systems, including roofs, plumbing, telephone systems, electrical systems, heating systems and cooling systems, are in working order and are capable of being properly maintained.

4. The buildings are structurally sound.

C. The standards that shall be used by the board to determine whether a school building meets the minimum adequate gross square footage requirements are as follows:

1. For a school district that provides instruction to pupils in programs for preschool children with disabilities, kindergarten programs and grades one through six, eighty square feet per pupil in programs for preschool children with disabilities, kindergarten programs and grades one through six.

2. For a school district that provides instruction to up to eight hundred pupils in grades seven and eight, eighty-four square feet per pupil in grades seven and eight.

3. For a school district that provides instruction to more than eight hundred pupils in grades seven and eight, eighty square feet per pupil in grades seven and eight or sixty-seven thousand two hundred square feet, whichever is more.

4. For a school district that provides instruction to up to four hundred pupils in grades nine through twelve, one hundred twenty-five square feet per pupil in grades nine through twelve.

5. For a school district that provides instruction to more than four hundred and up to one thousand pupils in grades nine through twelve, one hundred twenty square feet per pupil in grades nine through twelve or fifty thousand square feet, whichever is more.

6. For a school district that provides instruction to more than one thousand and up to one thousand eight hundred pupils in grades nine through twelve, one hundred twelve square feet per pupil in grades nine through twelve or one hundred twenty thousand square feet, whichever is more.

7. For a school district that provides instruction to more than one thousand eight hundred pupils in grades nine through twelve, ninety-four square feet per pupil in grades nine through twelve or two hundred one thousand six hundred square feet, whichever is more.

D. The board may modify the square footage requirements prescribed in subsection C of this section or modify the amount of monies awarded to cure the square footage deficiency pursuant to this section for particular school districts based on extraordinary circumstances for any of the following considerations:

1. The number of pupils served by the school district.

2. Geographic factors.

3. Grade configurations other than those prescribed in subsection C of this section.

E. In measuring the square footage per pupil requirements of subsection C of this section, the board shall:

1. Use the projected one hundredth day average daily membership for the current school year.
  2. For each school, use the lesser of either:
    - (a) Total gross square footage.
    - (b) Student capacity multiplied by the appropriate square footage per pupil prescribed by subsection C of this section.
  3. Consider the total space available in all schools in use in the school district, except that the board shall allow an exclusion of the square footage for certain schools and the pupils within the schools' boundaries if the school district demonstrates to the board's satisfaction unusual or excessive busing of pupils or unusual attendance boundary changes between schools.
  4. Compute the gross square footage of all buildings by measuring from exterior wall to exterior wall. Square footage used solely for district administration, storage of vehicles and other nonacademic purposes shall be excluded from the net square footage.
  5. Include all portable and modular buildings.
  6. Include in the net square footage new construction funded wholly or partially by the board based on the square footage funded by the board. If the new construction is to exceed the square footage funded by the board, the excess square footage shall not be included in the net square footage if any of the following applies:
    - (a) The excess square footage was constructed before July 1, 2002 or funded by a class B bond, impact aid revenue bond or capital outlay override approved by the voters after August 1, 1998 and before June 30, 2002 or funded from unrestricted capital outlay expended before June 30, 2002.
    - (b) The excess square footage of new school facilities does not exceed twenty-five percent of the minimum square footage requirements pursuant to subsection C of this section.
    - (c) The excess square footage of expansions to school facilities does not exceed twenty-five percent of the minimum square footage requirements pursuant to subsection C of this section.
  7. Exclude square footage built under a developer agreement according to section 15-342, paragraph 33 until the board provides funding for the square footage under section 41-5741, subsection O.
  8. Include square footage that a school district has leased to another entity.
- F. The board shall adopt rules establishing minimum school facility adequacy guidelines. The guidelines shall provide the minimum quality and quantity of school buildings and facilities and equipment necessary and appropriate to enable pupils to achieve the academic standards pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01. At a minimum, the board shall address all of the following in developing these guidelines:
1. School sites.
  2. Classrooms.
  3. Libraries and media centers, or both.
  4. Cafeterias.

5. Auditoriums, multipurpose rooms or other multiuse space.
6. Technology.
7. Transportation.
8. Facilities for science, arts and physical education.
9. Other facilities and equipment that are necessary and appropriate to achieve the academic standards prescribed pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01.
10. Appropriate combinations of facilities or uses listed in this section.

G. The board may convene subcommittees as needed on specific issues, including school facility safety standards. Notwithstanding any other law, a school district that receives grant monies from the building renewal grant fund established by section 41-5731 or monies from the new school facilities fund established by section 41-5741 shall consider school facility safety standards when completing approved projects or constructing new school facilities with monies received from those funds.

H. The board shall consider the facilities and equipment of the schools with the highest academic productivity scores, as prescribed in section 41-5702, subsection A, paragraph 6, subdivision (d), and the highest parent quality ratings in the establishment of the guidelines.

I. The board may consider appropriate combinations of facilities or uses in assessing and curing existing deficiencies pursuant to section 41-5702, subsection A, paragraph 1 and in certifying plans for new school facilities pursuant to section 41-5702, subsection C, paragraph 2.

J. If the board makes any changes to the minimum adequacy requirements prescribed in this section, the board shall provide a fiscal impact statement of the effect of the proposed changes to the joint committee on capital review for review.

K. For the purposes of this section, "student capacity" means the capacity adjusted to include any additions to or deletions of space, including modular or portable buildings at the school. The board shall determine the student capacity for each school in conjunction with each school district, recognizing each school's allocation of space as of July 1, 1998, to achieve the academic standards prescribed pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01.

#### 41-5721. Emergency deficiencies correction fund; definition

A. The emergency deficiencies correction fund is established consisting of monies transferred from the new school facilities fund established by section 41-5741. The division shall administer the emergency deficiencies correction fund and distribute monies in accordance with the rules of the division to school districts for emergency purposes. The division shall not transfer monies from the new school facilities fund if the division, in conjunction with the school facilities oversight board, determines that the transfer will affect, interfere with, disrupt or reduce any capital projects that the board has approved pursuant to section 41-5741. The division shall transfer to the emergency deficiencies correction fund the amount necessary each fiscal year to fulfill the requirements of this section. Within thirty days after transferring monies to the emergency deficiencies correction fund, the division shall report to the director of the joint legislative budget committee and the director of the governor's office of strategic planning and budgeting the amount and source of the transfer. Monies in the emergency deficiencies correction fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. If the division determines that there are insufficient monies in the emergency deficiencies correction fund to correct an emergency, the school district may correct the emergency pursuant to section 15-907.

C. If a school district has an emergency, the school district shall apply to the division for funding for the emergency. The school district's application shall disclose any insurance or building renewal monies available to the school district to pay for the emergency. Before applying to the division for funding for the emergency, the school district governing board shall issue an emergency declaration or resolution to be eligible for monies from the emergency deficiencies correction fund.

D. The division staff shall acknowledge receipt of the school district's application for emergency deficiencies funding in writing within five business days after receiving the application. The division staff shall include in the written acknowledgement of receipt to the school district any investigative, study or informational requirements from the school district, along with an estimated timeline to complete the requirements, necessary for the division staff to make a decision regarding funding.

E. The board shall review all policies and procedures that the division develops to administer this section.

F. For the purposes of this section, "emergency":

1. Means a serious need for materials, services or construction or expenses that exceeds the school district's adopted budget for the current fiscal year and that seriously threatens the functioning of the school district, the preservation or protection of property or public health, welfare or safety.

♣2. Includes all of the following:

(a) A situation that threatens life services such as adequate water supply, energy and wastewater.

♣(b) A situation in which a school district is under orders from an authority having jurisdiction for an unsafe environment such as the department of environmental quality, the occupational safety and health administration or the state fire marshal.

♣(c) The school district receives a professional and certified assessment showing that one or more facilities or systems are structurally unsafe and directly impact the functions of the school district with no alternative option available.

#### 41-5731. Building renewal grant fund; rules; definitions

A. The building renewal grant fund is established consisting of monies appropriated to the fund by the legislature. The division shall administer the fund and distribute monies to school districts for the purpose of maintaining the adequacy of existing school facilities. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. The division shall distribute monies from the building renewal grant fund based on grant requests from school districts to fund primary building renewal projects. Project requests shall be prioritized by the division, with priority given to school districts that have provided routine preventive maintenance on the facility. A school district must submit a preventive maintenance plan to the division to be eligible to receive monies from the building renewal grant fund. The division shall approve only projects that will be completed within twelve months, unless similar projects on average take longer to complete. A grant issued under this section expires twelve months after the grant request is approved unless the division issues an extension, except that if the division approves a project and determines that similar projects on average take longer than twelve months to complete, the division shall extend the grant expiration date based on the average amount of time that similar projects take to complete. The division shall establish a process by which a school district may request an extension under this subsection. On expiration of a

grant, a school district shall return any building renewal grant fund monies that the school district has not spent to the division for deposit in the building renewal grant fund. The division may spend monies from the fund for assessments to determine whether a grant from the fund is warranted under this section.

C. School districts that receive monies from the building renewal grant fund shall use these monies on projects for buildings or any part of a building in the division's database for any of the following:

1. Major renovations and repairs to a building that is used for student instruction or other academic purposes.
2. Upgrading systems and areas that will maintain or extend the useful life of the building.
3. Infrastructure costs.

D. Monies received from the fund shall not be used for any of the following purposes:

1. New construction.
2. Remodeling interior space for aesthetic or preferential reasons.
3. Exterior beautification.
4. Demolition.
5. Routine preventive maintenance.
6. Any project in a building, or part of a building, that is being leased to another entity.

E. Accommodation schools are not eligible for monies from the building renewal grant fund.

F. If the division or a court of competent jurisdiction determines that a school district received monies from the building renewal grant fund that must be reimbursed to the division due to legal action associated with improper construction by a hired contractor, the school district shall reimburse the division an agreed-on amount for deposit into the building renewal grant fund.

G. The division shall categorize each project that is eligible for monies from the building renewal grant fund as either critical or noncritical. The division shall adopt policies and procedures to prioritize critical projects and to designate critical projects as projects that immediately impact student safety or building closures or that result in operational disruptions. Critical projects have priority over any previously approved noncritical projects.

H. If the division determines that sufficient monies are not available for a noncritical project that the division has approved, the division shall notify the school district that submitted the project request that monies will be distributed from the building renewal grant fund for the project only if the legislature appropriates sufficient monies. If sufficient monies are not available in the fiscal year in which the project is awarded for a noncritical project, the noncritical project does not receive priority in the next fiscal year.

I. Building renewal grants pursuant to this section shall be used only for projects that serve an academic purpose.

J. The division shall do both of the following:

1. Implement policies and procedures to require a school district to report the preventive maintenance activities completed during the previous twelve months for the facility for which the monies are being requested.

2. Submit a monthly report to the school facilities oversight board that details how monies from the building renewal grant fund have been distributed.

K. In addition to establishing a project eligibility assessment under section 41-5702, subsection A, paragraph 5, subdivision (b), the division shall adopt rules regarding both of the following:

1. The approval of building renewal grants pursuant to this section.
2. Time frames for the division regarding all of the following with respect to this section:

- (a) Approving or denying grant requests for critical projects.
- (b) Notifying an applicant if the applicant's application is incomplete.
- (c) Providing regular updates to applicants regarding completed applications.
- (d) Distributing monies from the building renewal grant fund.

L. The board shall review all policies and procedures that the division develops to administer this section.

M. The division may spend monies from the fund for assessments to determine if a grant from the fund is warranted under this section.

N. For the purposes of this section:

1. "Primary building renewal projects" means projects that are necessary for buildings owned by school districts that are required to meet the minimum adequacy standards for student capacity and that fall below the minimum school facility adequacy guidelines, as adopted by the board pursuant to section 41-5711, for school districts that have provided routine preventive maintenance to the school facility.
2. "Routine preventive maintenance" means services that are performed on a regular schedule at intervals ranging from four times a year to once every three years, or on the schedule of services recommended by the manufacturer of the specific building system or equipment, and that are intended to extend the useful life of a building system and reduce the need for major repairs.
3. "Student capacity" has the same meaning prescribed in section 41-5711.

**41-5741. New school facilities fund; capital plan; reporting requirements**

A. The new school facilities fund is established consisting of monies appropriated by the legislature and monies credited to the new school facilities fund pursuant to section 37-221. The division shall administer the new school facilities fund and, at the direction of the school facilities oversight board, shall distribute monies, as a continuing appropriation, to school districts for the purpose of constructing new school facilities and for contracted expenses pursuant to section 41-5702, subsection B, paragraphs 2, 3 and 4.

B. The school facilities oversight board shall prescribe a uniform format for use by the school district governing board in developing and annually updating a capital plan that consists of each of the following:

1. Enrollment projections for the next five years for elementary schools and eight years for middle and high schools, including a description of the methods used to make the projections.

2. A description of new schools or additions to existing schools needed to meet the building adequacy standards prescribed in section 41-5711. The description shall include:

- (a) The grade levels and the total number of pupils that the school or addition is intended to serve.
- (b) The year in which it is necessary for the school or addition to begin operations.
- (c) A timeline that shows the planning and construction process for the school or addition.

3. Long-term projections of the need for land for new schools.

4. Any other necessary information required by the school facilities oversight board to evaluate a school district's capital plan.

5. If a school district pays tuition for all or a portion of the school district's high school pupils to another school district, the capital plan shall indicate the number of pupils for which the district pays tuition to another district. If a school district accepts pupils from another school district pursuant to section 15-824, subsection A, the school district shall indicate the projections for this population separately. This paragraph does not apply to a small isolated school district as defined in section 15-901.

C. If the capital plan indicates a need for a new school or an addition to an existing school within the next four years or a need for land within the next ten years, the school district shall submit its plan to the school facilities oversight board on or before September 1 and shall request monies from the new school facilities fund for the new construction or land. The board may require a school district to sell land that was previously purchased entirely with monies provided by the board if the board determines that the property is no longer needed within the ten-year period specified in this subsection for a new school or no longer needed within that ten-year period for an addition to an existing school. Monies provided for land are in addition to any monies provided pursuant to subsection D of this section.

D. At the direction of the board, the division shall distribute monies from the new school facilities fund for additional square footage as follows:

1. The board shall review and evaluate the enrollment projections. On or before December 15 of each year, following the submission of the enrollment projections, the board shall either approve the projections as submitted or revise the projections. In approving or revising the enrollment projections, the board shall use the average daily membership data available during the current school year. On request from the board, the department of education shall make available the most recent average daily membership data for use in revising the enrollment projections. In determining new construction requirements, the board shall determine the net new growth of pupils that will require additional square footage that exceeds the building adequacy standards prescribed in section 41-5711. If the projected growth and the existing number of pupils exceed three hundred fifty pupils who are served in a school district other than the pupil's resident school district, the board, the receiving school district and the resident school district shall develop a capital facilities plan on how to best serve those pupils. A small isolated school district as defined in section 15-901 is not required to develop a capital facilities plan pursuant to this paragraph.

2. If the average daily membership projections indicate that additional space will not be needed within the next two school years in order to meet the building adequacy standards prescribed in section 41-5711, the request shall be held for consideration by the board for possible future funding and the school district shall annually submit an updated plan until the additional space is needed.

3. If the average daily membership projections indicate that additional space will be needed within the next two school years in order to meet the building adequacy standards prescribed in section 41-5711, the board shall provide an amount as follows:

(a) Determine the number of pupils requiring additional square footage to meet building adequacy standards. This amount for elementary schools shall not be less than the number of new pupils for whom space will be needed in the next year and shall not exceed the number of new pupils for whom space will be needed in the next five years. This amount for middle and high schools shall not be less than the number of new pupils for whom space will be needed in the next four years and shall not exceed the number of new pupils for whom space will be needed in the next eight years.

(b) Multiply the number of pupils determined in subdivision (a) of this paragraph by the square footage per pupil. The square footage per pupil is ninety square feet per pupil for preschool children with disabilities, kindergarten programs and grades one through six, one hundred square feet for grades seven and eight, one hundred thirty-four square feet for a school district that provides instruction in grades nine through twelve for fewer than one thousand eight hundred pupils and one hundred twenty-five square feet for a school district that provides instruction in grades nine through twelve for at least one thousand eight hundred pupils. The total number of pupils in grades nine through twelve in the district shall determine the square footage factor to use for net new pupils. The board may modify the square footage requirements prescribed in this subdivision for particular schools based on any of the following factors:

(i) The number of pupils served or projected to be served by the school district.

(ii) Geographic factors.

(iii) Grade configurations other than those prescribed in this subdivision.

(iv) Compliance with minimum school facility adequacy requirements established pursuant to section 41-5711.

(c) Multiply the product obtained in subdivision (b) of this paragraph by the cost per square foot. The cost per square foot is \$270.24 for preschool children with disabilities, kindergarten programs and grades one through six, \$285.30 for grades seven and eight and \$330.30 for grades nine through twelve. The cost per square foot shall be adjusted annually for construction market considerations based on an index identified or developed by the joint legislative budget committee as necessary but not less than once each year. Each annual construction market adjustment applies to all projects approved by the school facilities board under this subsection during that year. The board shall multiply the cost per square foot by 1.05 for any school district located in a rural area. The board may only modify the base cost per square foot prescribed in this subdivision for particular schools based on geographic conditions or site conditions. Any extra monies received as a result of a modification based on geographic conditions or site conditions may be used to address unforeseen costs at any stage of a project under this section. For the purposes of this subdivision, "rural area" means an area outside a thirty-five-mile radius of a boundary of a municipality with a population of more than fifty thousand persons.

(d) Once the school district governing board obtains approval from the board for new facility construction monies, additional portable or modular square footage created for the express purpose of providing temporary space for pupils until the completion of the new facility and any additional space funded by the school district shall not be included by the board for the purpose of new construction funding calculations. On completion of the new facility construction project, any additional space funded by the school district shall be included as prescribed by this chapter and, if the portable or modular facilities continue in use, the portable or modular facilities shall be included as prescribed by this chapter, unless the board

approves their continued use for the purpose of providing temporary space for pupils until the completion of the next new facility that has been approved for funding from the new school facilities fund.

4. For projects approved after December 31, 2001, and notwithstanding paragraph 3 of this subsection, a unified school district that does not have a high school is not eligible to receive high school space as prescribed by section 41-5711 and this section unless the unified district qualifies for geographic factors prescribed by paragraph 3, subdivision (b), item (ii) of this subsection.

5. If a career technical education district leases a building from a school district, that building shall be included in the school district's square footage calculation for the purposes of new construction pursuant to this section.

6. If a school district leases a building to another entity, that building shall be included in the school district's square footage calculation for purposes of new construction pursuant to this section.

7. A school district shall qualify for monies from the new school facilities fund for additional square footage in a fiscal year only if the board has approved or revised its enrollment projection under paragraph 1 of this subsection on or before December 15 of the prior fiscal year.

E. Monies for architectural and engineering fees, project management services and preconstruction services shall be distributed on the completion of the analysis by the board of the school district's request. After receiving monies pursuant to this subsection, the school district shall submit a design development plan for the school or addition to the board before any monies for construction are distributed. If the school district's request meets the building adequacy standards, the board may review and comment on the district's plan with respect to the efficiency and effectiveness of the plan in meeting state square footage and facility standards before directing the distribution of the remainder of the monies. If the board modifies the cost per square foot as prescribed in subsection D, paragraph 3, subdivision (c) of this section, the board may deduct the cost of project management services and preconstruction services from the required cost per square foot. The board may decline to fund the project if the square footage is no longer required due to revised enrollment projections. The board may decline a portion of the funding if a portion of the square footage is no longer needed due to revised enrollment projections.

F. At the direction of the board, the division shall distribute the monies needed for land for new schools so that land may be purchased at a price that is less than or equal to fair market value and in advance of the construction of the new school. If necessary, the board may direct the division to distribute monies for land to be leased for new schools if the duration of the lease exceeds the life expectancy of the school facility by at least fifty percent. A school district shall not use land purchased or partially purchased with monies provided at the direction of the board for a purpose other than a site for a school facility without obtaining prior written approval from the board. A school district shall not lease, sell or take any action that would diminish the value of land purchased or partially purchased with monies provided at the direction of the board without obtaining prior written approval from the board. The proceeds derived through the sale of any land purchased or partially purchased, or the sale of buildings funded or partially funded, with monies provided at the direction of the board shall be returned to the state fund from which it was appropriated and to any other participating entity on a proportional basis. Except as provided in section 15-342, paragraph 33, if a school district acquires real property by donation at an appropriate school site approved by the board, the board shall direct the division to distribute an amount equal to twenty percent of the fair market value of the donated real property that can be used for academic purposes. The school district shall place the monies in the unrestricted capital outlay fund and increase the unrestricted capital budget limit by the amount of monies placed in the fund. Monies distributed under this subsection shall be distributed from the new school facilities fund. A school district that receives monies from the new school facilities fund for a donation of land pursuant to section 15-342, paragraph 33 shall not receive monies from the board or the division for the donation of real property pursuant to

this subsection. A school district shall not pay a consultant a percentage of the value of any of the following:

1. Donations of real property, services or cash from any of the following:

- (a) Entities that have offered to provide construction services to the school district.
- (b) Entities that have been contracted to provide construction services to the school district.
- (c) Entities that build residential units in that school district.
- (d) Entities that develop land for residential use in that school district.

2. Monies received under this chapter on behalf of the school district.

3. Monies paid by or at the direction of the board on behalf of the school district.

G. In addition to distributions to school districts based on pupil growth projections, a school district may submit an application to the board for monies from the new school facilities fund if one or more school buildings have outlived their useful life or have been condemned. If the board determines that the school district needs to build a new school building for these reasons, the board shall remove the square footage computations that represent the building from the computation of the school district's total square footage for purposes of this section. If the square footage recomputation reflects that the school district no longer meets building adequacy standards, the school district qualifies for a distribution of monies from the new school construction formula in an amount determined pursuant to subsection D of this section. The board may only modify the base cost per square foot prescribed in this subsection under extraordinary circumstances for geographic factors or site conditions.

H. School districts that receive monies from the new school facilities fund shall establish a district new school facilities fund and shall use the monies in the district new school facilities fund only for the purposes prescribed in this section. By October 15 of each year, each school district shall report to the board the projects funded at each school in the previous fiscal year with monies from the district new school facilities fund and shall provide an accounting of the monies remaining in the new school facilities fund at the end of the previous fiscal year.

I. If a school district has surplus monies received from the new school facilities fund, the school district may use the surplus monies only for capital purposes for the project for up to one year after completion of the project. If the school district possesses surplus monies from the new school construction project that have not been expended within one year of the completion of the project, the school district shall return the surplus monies to the division for deposit in the new school facilities fund.

J. The board's consideration of any application filed after December 31 of the year in which the property becomes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport or ancillary military facility shall include, if after notice is transmitted to the military airport pursuant to section 41-5702 and before the public hearing the military airport provides comments and an analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport or ancillary military facility operations that may have an adverse effect on public health and safety, consideration and an analysis of the comments and an analysis provided by the military airport before making a final determination.

K. If a school district uses its own project manager for new school construction, the members of the school district governing board and the project manager shall sign an affidavit stating that the members

and the project manager understand and will follow the minimum adequacy requirements prescribed in section 41-5711.

L. The division shall establish a separate account in the new school facilities fund designated as the litigation account to pay attorney fees, expert witness fees and other costs associated with litigation in which the board pursues the recovery of damages for deficiencies correction that resulted from alleged construction defects or design defects that the board believes caused or contributed to a failure of the school building to conform to the building adequacy requirements prescribed in section 41-5711. Attorney fees paid pursuant to this subsection shall not exceed the market rate for similar types of litigation. On or before December 1 of each year, the board shall report to the joint committee on capital review the costs associated with current and potential litigation that may be paid from the litigation account.

M. Until the state board of education and the auditor general adopt rules pursuant to section 15-213, subsection J, the board may allow school districts to contract for construction services and materials through the qualified select bidders list method of project delivery for new school facilities pursuant to this section.

N. The board shall submit electronically a report on project management services and preconstruction services to the governor, the president of the senate and the speaker of the house of representatives by December 31 of each year. The report shall compare projects that use project management and preconstruction services with those that do not. The report shall address cost, schedule and other measurable components of a construction project. School districts, construction-manager-at-risk firms and project management firms that participate in a board-funded project shall provide the information required by the board in relation to this report.

O. If a school district constructs new square footage according to section 15-342, paragraph 33, the board shall review the design plans and location of any new school facility submitted by school districts and another party to determine whether the design plans comply with the adequacy standards prescribed in section 41-5711 and the square footage per pupil requirements pursuant to subsection D, paragraph 3, subdivision (b) of this section. When the school district qualifies for a distribution of monies from the new school facilities fund according to this section, the board shall direct the division to distribute monies to the school district from the new school facilities fund for the square footage constructed under section 15-342, paragraph 33 at the same cost per square foot established by this section that was in effect at the time of the beginning of the construction of the school facility. Before the board directs the division to distribute any monies pursuant to this subsection, the school district shall demonstrate to the board that the facilities to be funded pursuant to this section meet the minimum adequacy standards prescribed in section 41-5711. The agreement entered into pursuant to section 15-342, paragraph 33 shall set forth the procedures for the allocation of these funds to the parties that participated in the agreement.

P. Accommodation schools are not eligible for monies from the new school facilities fund.

Q. If the board approves a school district for funding from the new school facilities fund and the full legislative appropriation is not available to the school district in the fiscal year following the approval by the board, the school district may use any legally available monies to pay for the land or the new construction project approved by the board and may reimburse the fund from which the monies were used in subsequent years with legislative appropriations when those appropriations are made available by this state.

[41-5751. Authorization of state school facilities revenue bonds](#)

A. The board may issue negotiable revenue bonds pursuant to this article. If authorized by the legislature, bonds may be issued under this article in a principal amount not exceeding \$200,000,000 in a fiscal year to:

1. Provide monies to pay the cost of:

(a) Acquiring real property and constructing new school facilities as provided by section 41-5741.

(b) Bond related expenses including any expenses incurred by the board to issue and administer its bonds including underwriting fees and costs, trustee fees, financial consultant fees, printing and advertising costs, paying agent fees, transfer agent fees, legal, accounting, feasibility consultant and other professional fees and expenses, bond insurance or other credit enhancements or liquidity facilities, attorney and accounting fees and expenses related to credit enhancement, bond insurance or liquidity enhancement, remarketing fees, rating agency fees and costs, travel and telephone expenses and all other fees considered necessary by the board in order to market and administer the bonds.

2. Fully or partially fund any reserves or sinking accounts established by the bond resolution.

B. The board shall authorize the bonds by resolution. The resolution shall prescribe:

1. The fixed or variable rate or rates of interest, the date or dates on which interest is payable and the denominations of the bonds.

2. The date or dates of the bonds and maturity, within ten years after the date of issuance.

3. The form of the bonds.

4. The manner of executing the bonds.

5. The medium and place of payment.

6. The terms of redemption, which may provide for a premium for early redemption.

C. The bonds issued pursuant to this article shall be known as state school facilities revenue bonds.

#### 41-5752. Issuance and sale of revenue bonds

A. The board shall issue the bonds in the number and amount provided in the resolution.

B. The bonds shall be sold at public or private sale at the price and on the terms prescribed in the resolution at, above or below par.

C. The net proceeds of the sale of the bonds shall be deposited in the revenue bond proceeds fund established pursuant to section 41-5753.

#### 41-5753. School facilities revenue bond proceeds fund; use for new school facilities

A. If the board issues revenue bonds under this article, the board shall establish a school facilities revenue bond proceeds fund consisting of the net proceeds received from the sale of the bonds.

B. The board may use monies in the school facilities revenue bond proceeds fund only for the purposes provided in section 41-5751, subsection A. Monies in the revenue bond proceeds fund are exempt from lapsing under section 35-190.

C. The state treasurer or bond trustee shall administer and account for the school facilities revenue bond proceeds fund.

41-5754. School facilities revenue bond debt service fund

A. The board shall establish a school facilities revenue bond debt service fund consisting of monies transferred to the fund pursuant to sections 37-521 and 42-5030.01.

B. Monies in the school facilities revenue bond debt service fund may be used only for the purposes authorized by this article.

C. The state treasurer or bond trustee shall administer and account for the school facilities revenue bond debt service fund.

41-5755. Securing principal and interest

A. In connection with issuing bonds authorized by this article and to secure the principal and interest on the bonds, the board by resolution may:

1. Segregate the school facilities revenue bond debt service fund into one or more accounts and subaccounts and provide that bonds issued under this article may be secured by a lien on all or part of the monies paid into the school facilities revenue bond debt service fund or into any account or subaccount in the fund.

2. Provide that the bonds issued under this article are secured by a first lien on the monies paid into the school facilities revenue bond debt service fund as provided by section 37-521, subsection B, paragraph 1 and section 42-5030.01, and pledge and assign to or in trust for the benefit of the holder or holders of the bonds all or part of the monies in the school facilities revenue bond debt service fund, any account or subaccount in the fund or in the school facilities revenue bond proceeds fund as is necessary to secure and pay the principal, the interest and any premium on the bonds as they come due.

3. Establish priorities among bondholders based on criteria adopted by the board.

4. Set aside, regulate and dispose of reserves and sinking accounts.

5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which the consent may be given.

6. Provide for payment of bond related expenses from the proceeds of the sale of the bonds or other revenues authorized by this article and available to the board.

7. Provide for the services of trustees, cotrustees, agents and consultants and other specialized services with respect to the bonds.

8. Take any other action that in any way may affect the security and protection of the bonds or interest on the bonds.

9. Refund any bonds issued by the board, if these bonds are secured from the same source of revenues as the bonds authorized by this article, by issuing new bonds.

10. Issue bonds partly to refund outstanding bonds and partly for any other purpose consistent with this article.

B. Bonds issued to refund any bonds issued by the board as provided by subsection A, paragraphs 9 and 10 of this section are not subject to legislative authorization or the \$200,000,000 limit prescribed by section 41-5751, subsection A.

#### 41-5756. Lien of pledge

A. Any pledge made under this article is valid and binding from the time when the pledge is made.

B. The monies so pledged and received by the board to be placed in the school facilities revenue bond debt service fund are immediately subject to the lien of the pledge without any future physical delivery or further act. Any lien of any pledge is valid and binding against all parties that have claims of any kind against the board, regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when adopted by the board, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place to perfect the pledge.

#### 41-5757. Bond purchase: cancellation

The board may purchase bonds for cancellation out of any monies available for the purchase, at a price of not more than either of the following:

1. If the bonds are redeemable at the time of the purchase, the applicable redemption price plus accrued interest to the next interest payment date on the bonds.

2. If the bonds are not redeemable at the time of the purchase, the applicable redemption price on the first date after the purchase on which the bonds become subject to redemption plus accrued interest to that date.

#### 41-5758. Payment of revenue bonds

A. The revenue bonds shall be paid solely from monies from the school facilities revenue bond debt service fund established by section 41-5754 and other monies that are credited to the school facilities revenue bond debt service fund.

B. The state treasurer or the paying agent for the revenue bonds shall cancel all revenue bonds when paid.

#### 41-5759. Investment of monies in school facilities revenue bond proceeds fund

A. As provided by section 41-5761, the board may authorize the state treasurer or bond trustee to invest monies in the school facilities revenue bond proceeds fund established by section 41-5753.

B. The order directing an investment shall state a specified time when the proceeds from the sale of the bonds will be used. The state treasurer or bond trustee shall make the investment in such a way as to mature at the specified date.

C. All monies earned as interest or otherwise derived from the investment of the monies in the school facilities revenue bond proceeds fund shall be credited to the school facilities revenue bond debt service fund established by section 41-5754.

#### 41-5760. Investment of monies in school facilities revenue bond debt service fund

A. The board may authorize the state treasurer or bond trustee to invest and reinvest any monies in the school facilities revenue bond debt service fund as provided by section 41-5761.

B. All monies earned as interest or otherwise derived from the investment of the monies in the school facilities revenue bond debt service fund shall be credited to that fund.

41-5761. Authorized investments of fund monies

A. On notice from the board, the state treasurer or bond trustee shall invest and divest monies in either the school facilities revenue bond proceeds fund or the school facilities revenue debt service fund in any of the following:

1. Obligations issued or guaranteed by the United States or any of the senior debt of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.
2. State, county or municipal bonds issued in this state on which the payments of interest have not been deferred.
3. Investment agreements and repurchase agreements collateralized by investments described in paragraph 1 of this subsection.

B. The purchase of the securities shall be made by the state treasurer or bond trustee on authority of a resolution of the board. The treasurer or bond trustee shall act as custodian of all securities purchased. The securities may be sold on an order of the board.

41-5762. Characteristics of bonds; negotiable; exemption from taxation; obligation; legal investments

A. Bonds issued under this article are fully negotiable within the meaning and for all purposes of the uniform commercial code, subject only to any provisions for registration, regardless of whether the bonds actually constitute negotiable instruments under the uniform commercial code.

B. The bonds, their transfer and the income from the bonds are at all times free from taxation in this state.

C. Bonds issued under this article:

1. Are obligations of the board. The members of the board and persons executing the bonds are not personally liable for payment of the bonds.
2. Are payable only according to their terms.
3. Are not general, special or other obligations of this state.
4. Do not constitute a debt of this state.
5. Are not enforceable against this state nor is payment of the bonds enforceable out of any monies other than the revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.
6. Are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in government obligations may properly and legally invest.
7. Are securities that may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of government bonds or obligations.

41-5763. Effect of changing circumstances on bonds; agreement of state

A. Bonds issued under this article remain valid and binding obligations of the board notwithstanding that, before the delivery of the bonds, any of the persons whose signatures appear on the bonds cease to be members of the board.

B. An amendment of any provision of this article does not diminish or impair the validity of bonds issued under this article or the remedies and rights of bondholders.

C. This state pledges to and agrees with the holders of the bonds authorized by this article that this state will not limit, alter or impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest on the bonds, interest on any unpaid installments of principal or interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The board, as agent for this state, may include this pledge and undertaking in its resolutions and indentures authorizing and securing the bonds.

41-5764. Validity of bonds; certification by attorney general

A. This article constitutes full authority for authorizing and issuing bonds without reference to any other law of this state. No other law with regard to authorizing or issuing obligations or that in any way impedes or restricts performing the acts authorized by this article may be construed to apply to any proceedings taken or acts done pursuant to this article.

B. The validity of bonds issued under this article does not depend on and is not affected by the legality of any proceeding relating to any action by the board in granting or lending monies or the acquisition, construction or improvement of any facility paid with monies provided by the board.

C. The board may submit to the attorney general revenue bonds to be issued under this article after all proceedings for authorizing the bonds have been completed. Within fifteen days after submission, the attorney general shall examine the bonds and pass on the validity of the bonds and the regularity of the proceedings. If the bonds and proceedings comply with the Constitution of Arizona and this article, and if the bonds when delivered and paid for will constitute binding and legal obligations of the board, the attorney general shall certify in substance that the bonds are issued according to the constitution and laws of this state. The certificate shall also state that the bonds are also validly secured by the obligation to transfer monies from designated sources of revenue, including income on the permanent state school fund established by section 37-521, to cover any insufficiencies.

D. The bonds shall recite that they are regularly issued pursuant to this article. That recital, together with the certification by the attorney general under subsection C of this section, constitutes prima facie evidence of the legality and validity of the bonds. From and after the sale and delivery of the bonds, they are incontestable by the board or this state.

41-5781. Authorization of state school improvement revenue bonds; expiration

A. The board may issue revenue bonds in a principal amount not to exceed \$800,000,000 pursuant to this article. The board may also issue qualified zone academy bonds within the meaning of section 1397e of the United States internal revenue code of 1986 or successor provisions pursuant to this article in a principal amount not to exceed \$20,000,000. The qualified zone academy bonds shall be separately accounted for within the school improvement revenue bond proceeds fund established by section 41-5783. All bonds authorized by this section may be issued for the following purposes:

1. To provide monies to pay the cost of bond-related expenses, including any expenses incurred by the board to issue and administer its bonds, including underwriting fees and costs, trustee fees, financial

consultant fees, printing and advertising costs, paying agent fees, transfer agent fees, legal, accounting, feasibility consultant and other professional fees and expenses, bond insurance or other credit enhancements or liquidity facilities, attorney and accounting fees and expenses related to credit enhancement, bond insurance or liquidity enhancement, remarketing fees, rating agency fees and costs, travel and telephone expenses and all other fees considered necessary by the board in order to market and administer the bonds.

2. To fully or partially fund any reserves or sinking accounts established by the bond resolution.

B. The board shall authorize the bonds by resolution. The resolution shall prescribe:

1. The fixed or variable rate or rates of interest, the date or dates on which interest is payable and the denominations of the bonds.

2. The date or dates of the bonds and maturity, within twenty years after the date of issuance.

3. The form of the bonds.

4. The manner of executing the bonds.

5. The medium and place of payment.

6. The terms of redemption, which may provide for a premium for early redemption.

C. The bonds issued pursuant to this article shall be known as state school improvement revenue bonds.

D. The authority of the board to issue school improvement revenue bonds pursuant to this article expires from and after June 30, 2003, except for bonds issued to refund any bonds issued by the board.

#### 41-5782. Issuance and sale of school improvement revenue bonds

A. The board shall issue the school improvement revenue bonds in the number and amount provided in the resolution.

B. The bonds shall be sold at public or private sale at the price and on the terms prescribed in the resolution at, above or below par.

C. The net proceeds of the sale of the bonds shall be deposited in the school improvement revenue bond proceeds fund established pursuant to section 41-5783.

#### 41-5783. School improvement revenue bond proceeds fund; use for school improvements

A. If the board issues revenue bonds under this article, the board shall establish a school improvement revenue bond proceeds fund consisting of the net proceeds received from the sale of the bonds.

B. The board may use monies in the school improvement revenue bond proceeds fund only for the purposes provided in section 41-5781, subsection A. Monies in the school improvement revenue bond proceeds fund are exempt from lapsing under section 35-190.

C. The state treasurer or bond trustee shall administer and account for the school improvement revenue bond proceeds fund.

#### 41-5784. School improvement revenue bond debt service fund

A. The board shall establish a school improvement revenue bond debt service fund consisting of monies received by the board pursuant to section 42-5029, subsection E and section 37-521, subsection B, paragraph 1. All monies received pursuant to section 42-5029, subsection E shall be accounted for separately and shall be used only for debt service of school improvement revenue bonds. All monies received pursuant to section 37-521, subsection B, paragraph 1 shall be accounted for separately and shall be used only for debt service of qualified zone academy bonds.

B. Monies in the school improvement revenue bond debt service fund may be used only for the purposes authorized by this article.

C. The state treasurer or bond trustee shall administer and account for the school improvement revenue bond debt service fund.

#### 41-5785. Securing principal and interest

A. In connection with issuing bonds authorized by this article and to secure the principal and interest on the bonds, the board by resolution may:

1. Segregate the school improvement revenue bond debt service fund into one or more accounts and subaccounts and provide that bonds issued under this article may be secured by a lien on all or part of the monies paid into the revenue bond debt service fund or into any account or subaccount in the fund.
2. Provide that the bonds issued under this article be secured by a first lien on the monies paid into the school improvement revenue bond debt service fund as provided by section 42-5029, subsection E, paragraph 1 and pledge and assign to or in trust for the benefit of the holder or holders of the bonds all or part of the monies in the school improvement revenue bond debt service fund, in any account or subaccount in the fund or in the school improvement revenue bond proceeds fund as is necessary to secure and pay the principal, the interest and any premium on the bonds as they come due.
3. Establish priorities among bondholders based on criteria adopted by the board.
4. Set aside, regulate and dispose of reserves and sinking accounts.
5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which the consent may be given.
6. Provide for paying bond-related expenses from the proceeds of the sale of the bonds or other revenues authorized by this article and available to the board.
7. Provide for the services of trustees, cotrustees, agents and consultants and other specialized services with respect to the bonds.
8. Take any other action that in any way may affect the security and protection of the bonds or interest on the bonds.
9. Refund any bonds issued by the board, if these bonds are secured from the same source of revenues as the bonds authorized by this article, by issuing new bonds, whether at or before maturity of the bonds being refunded.
10. Issue bonds partly to refund outstanding bonds and partly for any other purpose consistent with this article.

B. Bonds that are issued to refund any bonds that are issued by the board as provided by subsection A, paragraphs 9 and 10 of this section are not subject to legislative authorization or subject to the \$800,000,000 limit prescribed by section 41-5781, subsection A.

[41-5786. Lien of pledge](#)

A. Any pledge made under this article is valid and binding from the time when the pledge is made.

B. The monies so pledged and received by the board to be placed in the school improvement revenue bond debt service fund are immediately subject to the lien of the pledge without any future physical delivery or further act. Any lien of any pledge is valid and binding against all parties that have claims of any kind against the board, regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when adopted by the board, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place to perfect the pledge.

[41-5787. Bond purchase: cancellation](#)

The board may purchase bonds for cancellation out of any monies available for the purchase at a price of not more than either of the following:

1. If the bonds are redeemable at the time of the purchase, the applicable redemption price plus accrued interest to the next interest payment date on the bonds.
2. If the bonds are not redeemable at the time of the purchase, the applicable redemption price on the first date after the purchase on which the bonds become subject to redemption plus accrued interest to that date.

[41-5788. Payment of revenue bonds](#)

A. The revenue bonds shall be paid solely from monies from the school improvement revenue bond debt service fund established pursuant to section 41-5784 and other monies that are credited to the school improvement revenue bond debt service fund.

B. The state treasurer or the paying agent for the revenue bonds shall cancel all revenue bonds when paid.

[41-5789. Investment of monies in school improvement revenue bond proceeds fund](#)

A. As provided by section 41-5791, the board may authorize the state treasurer or bond trustee to invest monies in the school improvement revenue bond proceeds fund established pursuant to section 41-5783.

B. The order directing an investment shall state a specified time when the proceeds from the sale of the bonds will be used. The state treasurer or bond trustee shall make the investment in such a way as to mature at the specified date.

C. All monies earned as interest or otherwise derived from the investment of the monies in the school improvement revenue bond proceeds fund shall be credited to the school improvement revenue bond debt service fund established by section 41-5784.

[41-5790. Investment of monies in school improvement revenue bond debt service fund](#)

A. The board may authorize the state treasurer or bond trustee to invest and reinvest any monies in the school improvement revenue bond debt service fund as provided by section 41-5791.

B. All monies earned as interest or otherwise derived from the investment of the monies in the school improvement revenue bond debt service fund shall be credited to that fund.

41-5791. Authorized investments of fund monies

A. On notice from the board, the state treasurer or bond trustee shall invest and divest monies in either the school improvement revenue bond proceeds fund or the school improvement revenue bond debt service fund in any of the following:

1. Obligations issued or guaranteed by the United States or any of the senior debt of its agencies, sponsored agencies, corporations, sponsored corporations or instrumentalities.
2. State, county or municipal bonds that are issued in this state and on which the payments of interest have not been deferred.
3. Investment agreements and repurchase agreements collateralized by investments described in paragraph 1 of this subsection.

B. The purchase of the securities shall be made by the state treasurer or bond trustee on authority of a resolution of the board. The treasurer or bond trustee shall act as custodian of all securities purchased. The securities may be sold on an order of the board.

41-5792. Characteristics of bonds; negotiable; exemption from taxation; obligation; legal investments

A. Bonds issued under this article are fully negotiable within the meaning and for all purposes of the uniform commercial code, subject only to any provisions for registration, regardless of whether the bonds actually constitute negotiable instruments under the uniform commercial code.

B. The bonds, their transfer and the income from the bonds are at all times free from taxation in this state.

C. Bonds issued under this article:

1. Are obligations of the board. The members of the board and persons executing the bonds are not personally liable for payment of the bonds.
2. Are payable only according to their terms.
3. Do not constitute a debt of this state.
4. Are not enforceable against this state nor is payment of the bonds enforceable out of any monies other than the revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.
5. Are securities in which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in government obligations may properly and legally invest.
6. Are securities that may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of government bonds or obligations.

41-5793. Effect of changing circumstances on bonds; agreement of state

A. Bonds issued under this article remain valid and binding obligations of the board notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board.

B. An amendment of any provision of this article does not diminish or impair the validity of bonds issued under this article or the remedies and rights of bondholders.

C. This state pledges to and agrees with the holders of the bonds authorized by this article that this state will not limit, alter or impair the rights and remedies of the bondholders until all bonds issued under this article, together with interest on the bonds, interest on any unpaid installments of principal or interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The board, as agent for this state, may include this pledge and undertaking in its resolutions and indentures authorizing and securing the bonds.

41-5794. Validity of bonds: certification by attorney general

A. This article constitutes full authority for authorizing and issuing bonds without reference to any other law of this state. No other law with regard to authorizing or issuing obligations or that in any way impedes or restricts performing the acts authorized by this article may be construed to apply to any proceedings taken or acts done pursuant to this article.

B. The validity of bonds issued under this article does not depend on and is not affected by the legality of any proceeding relating to any action by the board in granting or lending monies or the acquisition, construction or improvement of any facility paid with monies provided by the board.

C. The board may submit to the attorney general revenue bonds to be issued under this article after all proceedings for authorizing the bonds have been completed. Within fifteen days after submission, the attorney general shall examine the bonds and pass on the validity of the bonds and the regularity of the proceedings. If the bonds and proceedings comply with the Constitution of Arizona and this article, and if the bonds when delivered and paid for will constitute binding and legal obligations of the board, the attorney general shall certify in substance that the bonds are issued according to the constitution and laws of this state.

D. The bonds shall recite that they are regularly issued pursuant to this article. That recital, together with the certification by the attorney general under subsection C of this section, constitutes prima facie evidence of the legality and validity of the bonds. From and after the sale and delivery of the bonds, they are incontestable by the board or this state.

**INDUSTRIAL COMMISSION OF ARIZONA**

Title 20, Chapter 5

**Amend:** R20-5-401, R20-5-402, R20-5-404, R20-5-406, R20-5-407, R20-5-408, R20-5-409,  
R20-5-410, R20-5-411, R20-5-412, R20-5-413, R20-5-415, R20-5-416, R20-5-417,  
R20-5-418, R20-5-419, R20-5-420, R20-5-429, R20-5-430, R20-5-431, R20-5-432

**Repeal:** R20-5-403



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 7, 2022

**SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA**  
Title 20, Chapter 5

**Amend:** R20-5-401, R20-5-402, R20-5-404, R20-5-406, R20-5-407,  
R20-5-408, R20-5-409, R20-5-410, R20-5-411, R20-5-412,  
R20-5-413, R20-5-415, R20-5-416, R20-5-417, R20-5-418,  
R20-5-419, R20-5-420, R20-5-429, R20-5-430, R20-5-431,  
R20-5-432

**Repeal:** R20-5-403

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### **Summary:**

This regular rulemaking from the Industrial Commission of Arizona (Commission) seeks to amend twenty (20) rules and repeal one (1) rule in Title 20, Chapter 5, Article 4 related to the standards and regulations for Arizona Boilers and Lined Hot Water Heaters.

Pursuant to A.R.S. §§ 23-474, 23-475, 23-476, the Industrial Commission of Arizona (the "Commission") is required to (1) adopt standards and regulations pursuant to section 23-475 and adopt other rules as are necessary, (2) recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval, and (3) propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigation through the division's employees

and through consultation with the boiler advisory board and other persons knowledgeable in the business for which the standards or regulations are being formulated.

Pursuant to A.R.S. § 41-1028, “[a]n agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of...a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.” The Commission is proposing to incorporate by reference the following national consensus codes and standards:

1. 2019 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VI, VII, VIII Division 1, 2, 3, IX, X
2. 2020 ASME Code for Pressure Piping, B31.1
3. 2019 ASME PVHO-1 Safety Standard for Pressure Vessels for Human Occupancy
4. 2017 ANSI Z21.10.3 American National Standard for Gas Water Heaters
5. 2018 ANSI/ASME CSD-1 American National Standard for Controls and Safety Devices for Automatically Fired Boilers
6. 2018 ANSI Z223.1 NFPA 54, National Fuel Gas Code
7. 2019 ANSI NFPA 85, Boiler and Combustion Systems Hazards Code
8. 2019 ANSI/NB-23, National Board Inspection Code
9. 2018 ASME Code for Pressure Piping B31.1
10. 2012 NB-27, Revision 1 (1/13), National Board of Boiler and Pressure Vessel Inspectors, A Guide for Blowoff Vessels

The Commission has provided a detailed description of the changes between the updated versions of these codes and standards and the older versions currently incorporated by reference in the Commission’s rules in Section 6 of the Preamble to the Notice of Final Rulemaking.

In addition to the incorporation of the codes and standards listed above, the Commission indicates the proposed amendments define electric boilers, direct fired pressure vessel, pressure vessel, PVHO, and unfired steam boiler; revise the definitions for the ASME Code, boiler, forced circulation hot water heater, national board registration number, and state identification number; bring the Boiler Advisory Board rule into compliance with the current version of A.R.S. §23-374 by repealing the rule; clarify the language in the rules to better define which rules apply to which owners; set forth a timeline for compliance with A.R.S. §23-485(D); update the requirements for an inspection report; clarify the frequency of inspection for a power boiler; clarify the frequency of internal inspections for boilers; adjust the requirements for preparation of inspection of a boiler; amend the procedure for obtaining a special inspector certificate which partially conflicts with A.R.S. §23-485; and update requirements for flow sensing devices.

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

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

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

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

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

The Commission indicates it did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Industrial Commission states that they anticipate that the proposed rulemaking will have no adverse economic, small business, or consumer impact. They indicate that the rulemaking is intended to reduce regulatory burden by eliminating incorrect or confusing language in the current rules to allow for the affected stakeholders to have a clearer understanding of what is required. Additionally, they believe that by adopting the most current standards and codes the amendments would facilitate stakeholders in using more modern technology which may provide a cost benefit. Stakeholders include the Commission, owners, operators, users or inspectors of boilers, hot lined water heaters or pressure vessels.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission states they did not consider alternative methods.

6. **What are the economic impacts on stakeholders?**

The Commission indicates that because the proposed rules do not place new obligations, costs, or time constraints on employers, adoptions of the rules is not expected to impose administrative or other cost required for compliance in Arizona.

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

Between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council, the Commission indicates rule R20-5-404(A)(8) was amended to include the following phrase: “[t]his incorporation does not include any later amendments or editions of the incorporated matter,” to comply with the requirements for incorporation by reference in A.R.S. § 41-1028(B). Council staff does not believe this change constitutes a substantially different rule pursuant to A.R.S. § 41-1025.

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

The Commission indicates it received no comments regarding this rulemaking.

**9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit, license, or agency authorization.

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

The Commission indicates there are no corresponding federal laws applicable to the subject of this rulemaking.

**11. Conclusion**

This regular rulemaking from the Commission seeks to amend twenty (20) rules and repeal one (1) rule in Title 20, Chapter 5, Article 4 related to the standards and regulations for Arizona Boilers and Lined Hot Water Heaters. Specifically, the Commission is proposing to incorporate by reference several updated national consensus codes and standards. Additionally, the Commission indicates the proposed amendments add definitions, revise existing definitions, bring rules into compliance with statute, clarify and update requirements, and amend procedures.

The Commission is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1), “[t]o preserve the public peace, health or safety.” Specifically, the Commission indicates the proposed amendments directly affect the health and safety of employees working in the State of Arizona and the Commission anticipates that the amended rules will help reduce workplace deaths, injuries, and illnesses. Council staff believes the Commission has provided sufficient information that demonstrates a need for an immediate effective date to preserve the public peace, health, or safety.

Council staff recommends approval of this rulemaking.

**THE INDUSTRIAL COMMISSION OF ARIZONA  
OFFICE OF THE DIRECTOR**



**DALE L. SCHULTZ, CHAIRMAN**  
**JOSEPH M. HENNELLY, JR., VICE CHAIR** P.O. Box 19070  
**SCOTT P. LEMARR, MEMBER** Phoenix, Arizona 85005-9070  
**D. ALAN EVERETT, MEMBER**

**JAMES ASHLEY, DIRECTOR**  
**PHONE: (602) 542-4411**  
**FAX: (602) 542-7889**

October 17, 2022

Sent via e-mail to [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Request for Approval of Rulemaking: A.A.C. Title 20, Chapter 5, Rule 401 Applicability, A.A.C. Title 20, Chapter 5, Rule 402 Definitions, A.A.C. Title 20, Chapter 5, Rule 403 Boiler Advisory Board, A.A.C. Title 20, Chapter 5, Rule 404 Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels, A.A.C. Title 20, Chapter 5, Rule 406 Repairs and Alterations, A.A.C. Title 20, Chapter 5, Rule 407 Inspection of Boilers, Lined Hot Water Storage Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates, A.A.C. Title 20, Chapter 5, Rule 408 Frequency of Inspection, A.A.C. Title 20, Chapter 5, Rule R20-5-409 Notification and Preparation for Inspection, A.A.C. Title 20, Chapter 5, Rule 410 Report of Accident, A.A.C. Title 20, Chapter 5, Rule 411 Hydrostatic Tests, A.A.C. Title 20, Chapter 5, Rule 412 Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices, A.A.C. Title 20, Chapter 5, Rule R20-5-413 Safety and Safety Relief Valves, A.A.C. Title 20, Chapter 5, Rule R20-5-415 Boiler Blowdown, Blowoff Equipment and Drains, A.A.C. Title 20, Chapter 5, Rule R20-5-416 Maximum Allowable Working Pressure, A.A.C. Title 20, Chapter 5, Rule R20-5-417 Maintenance and Operation of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles, A.A.C. Title 20, Chapter 5, Rule R20-5-418 Non-standard Boilers, A.A.C. Title 20, Chapter 5, Rule R20-5-419 Request to Reinstall Boiler or Lined Hot Water Heater, A.A.C. Title 20, Chapter 5, Rule R20-5-420 Special Inspector Certificate under A.R.S. § 23-485, A.A.C. Title 20, Chapter 5, Rule R20-5-429 Variance, A.A.C. Title 20, Chapter 5, Rule R20-5-430 Forced Circulation Hot Water Heaters, A.A.C. Title 20, Chapter 5, Rule R20-5-431 Code Cases, and A.A.C. Title 20, Chapter 5, Rule R20-5-432 Historical Boilers

Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission") requests that the Governor's Regulatory Review Council (the "Council") approve the above-referenced rulemaking. Pursuant to A.A.C. R1-6-201(A)(1), the Commission provides the following information:

**a. The close of record date.**

October 11, 2022.

**b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council.**

The subject rulemaking relates to the following five-year review report: Title 20, Chapter 5, Article 4, Arizona Boilers and Lined Hot Water Heaters approved June 4, 2019.

**c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee.**

The subject rulemaking does not establish a new fee.

**d. Whether the rule contains a fee increase.**

The subject rulemaking does not contain a fee increase.

**e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032.**

The Commission is requesting an immediate effective date under A.R.S. § 41-1032(A)(1) (“To preserve the public peace, health or safety.”). Pursuant to A.R.S. §§ 23-474, 23-475, 23-476, the Industrial Commission of Arizona (the “Commission”) is required to (1) adopt standards and regulations pursuant to section 23-475 and adopt other rules as are necessary, (2) recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval, and (3) propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigation through the division's employees and through consultation with the boiler advisory board and other persons knowledgeable in the business for which the standards or regulations are being formulated. The Commission is proposing to amend A.A.C. R20-5-401 (Applicability), A.A.C. R20-5-402 (Definitions), A.A.C. R20-5-404 Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels), A.A.C. R20-5-406 (Repairs and Alterations), A.A.C. R20-5-407 (Inspection of Boilers, Lined Hot Water Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates), A.A.C. R20-5-408 (Frequency of Inspection), A.A.C. R20-5-409 (Notification and Preparation for Inspection), A.A.C. R20-5-410 (Report of Accident), A.A.C. R20-5-411 (Hydrostatic Tests), A.A.C. R20-5-412 (Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices), A.A.C. R20-5-413 (Safety and Safety Relief Valves), A.A.C. R20-5-415 (Boiler Blowdown, Blowoff Equipment and Drains), A.A.C. R20-5-416 (Maximum Allowable Working Pressure), A.A.C. R20-5-417 (Maintenance and Operations of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles), A.A.C. R20-5-418 (Non-standard Boilers), A.A.C. R20-5-419 (Request to Reinstall Boiler or Lined Hot Water Heater, A.A.C. R20-5-420 (Special Inspector Certificates under A.R.S. § 23-485), A.A.C. R20-5-429 (Variance), A.A.C. R20-5-430 (Forced Circulation Hot Water Heaters), A.A.C. R20-5-431 (Code Cases) and A.A.C. R20-5-432 (Historical Boilers). Additionally, the Commission is proposing to repeal A.A.C. R20-5-403 (Boiler Advisory Board). The proposed amendments directly affect the health and

safety of employees working in the State of Arizona and the Commission anticipates that the amended rules will help reduce workplace deaths, injuries, and illnesses.

- f. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.**

The Commission did not rely on a study for justification of the subject rulemaking.

- g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.**

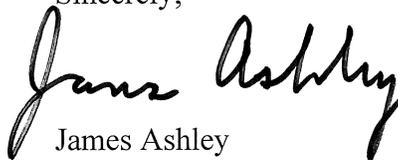
The Commission does not anticipate that it will be necessary to hire any new full-time employees to implement or enforce the subject rulemaking.

- h. A list of all documents enclosed.**

Governor's Office Approvals of Initial and Final Rulemaking  
Notice of Final Rulemaking  
Economic Impact Statement  
General and Specific Statutes Authorizing Rulemaking  
Defined Terms

Thank you for your consideration. Should you have any questions regarding the amendments, please contact Gaetano Testini, Chief Legal Counsel, at 602-542-5781.

Sincerely,



James Ashley  
Director

Enclosures

**NOTICE OF FINAL RULEMAKING**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**PREAMBLE**

<b><u>1. Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R20-5-401	Amend
R20-5-402	Amend
R20-5-403	Repeal
R20-5-404	Amend
R20-5-406	Amend
R20-5-407	Amend
R20-5-408	Amend
R20-5-409	Amend
R20-5-410	Amend
R20-5-411	Amend
R20-5-412	Amend
R20-5-413	Amend
R20-5-415	Amend
R20-5-416	Amend
R20-5-417	Amend
R20-5-418	Amend
R20-5-419	Amend
R20-5-420	Amend
R20-5-429	Amend
R20-5-430	Amend
R20-5-431	Amend
R20-5-432	Amend

**2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statute:**

Authorizing statute: A.R.S. § 23-108.01

Implementing statute: A.R.S. §§ 23-474, 23-475, 23-476

Note: An exemption from Executive Order 2022-01 was provided for this rulemaking by Mr. Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated July 22, 2022. A second exemption from Executive Order 2022-01 was provided for this rulemaking by Mr. Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated October 11, 2022.

**3. The effective date of this rule:**

The Industrial Commission of Arizona (the “Commission”) requests an immediate effective date under A.R.S. § 41-1032(A)(1) (“To preserve the public peace, health or safety.”).

**a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

The Commission requests an immediate effective date under A.R.S. § 41-1032(A)(1) (“To preserve the public peace, health or safety.”).

Pursuant to A.R.S. §§ 23-474, 23-475, 23-476, the Industrial Commission of Arizona (the “Commission”) is required to (1) adopt standards and regulations pursuant to section 23-475 and adopt other rules as are necessary, (2) recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval, and (3) propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigation through the division's employees and through consultation with the boiler advisory board and other persons knowledgeable in the business for which the standards or regulations are being formulated.

The Commission is proposing to amend A.A.C. R20-5-401 (Applicability), A.A.C. R20-5-402 (Definitions), A.A.C. R20-5-404 Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels), A.A.C. R20-5-406 (Repairs and Alterations), A.A.C. R20-5-407 (Inspection of Boilers, Lined Hot Water Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates), A.A.C. R20-5-408 (Frequency of Inspection), A.A.C. R20-5-409 (Notification and Preparation for Inspection), A.A.C. R20-5-410 (Report of

Accident), A.A.C. R20-5-411 (Hydrostatic Tests), A.A.C. R20-5-412 (Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices), A.A.C. R20-5-413 (Safety and Safety Relief Valves), A.A.C. R20-5-415 (Boiler Blowdown, Blowoff Equipment and Drains), A.A.C. R20-5-416 (Maximum Allowable Working Pressure), A.A.C. R20-5-417 (Maintenance and Operations of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles), A.A.C. R20-5-418 (Non-standard Boilers), A.A.C. R20-5-419 (Request to Reinstall Boiler or Lined Hot Water Heater, A.A.C. R20-5-420 (Special Inspector Certificates under A.R.S. § 23-485), A.A.C. R20-5-429 (Variance), A.A.C. R20-5-430 (Forced Circulation Hot Water Heaters), A.A.C. R20-5-431 (Code Cases) and A.A.C. R20-5-432 (Historical Boilers). Additionally, the Commission is proposing to repeal A.A.C. R20-5-403 (Boiler Advisory Board).

The proposed amendments directly affect the health and safety of employees working in the State of Arizona and the Commission anticipates that the amended rules will help reduce workplace deaths, injuries, and illnesses.

**4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 28 A.A.R. 2300, September 9, 2022.

Notice of Proposed Rulemaking: 28 A.A.R. 2243, September 9, 2022.

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Jessie Atencio, Director  
Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington St., Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-5795  
Fax: (602) 542-1614  
E-mail: jessie.atencio@azdosh.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Pursuant to A.R.S. §§ 23-474, 23-475, 23-476, the Industrial Commission of Arizona (the "Commission") is required to (1) adopt standards and regulations pursuant to section 23-475

and adopt other rules as are necessary, (2) recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval, and (3) propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigation through the division's employees and through consultation with the boiler advisory board and other persons knowledgeable in the business for which the standards or regulations are being formulated.

The Industrial Commission of Arizona is proposing to incorporate by reference the following national consensus codes and standards:

- (1) 2019 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VI, VII, VIII  
Division 1, 2, 3, IX, X
- (2) 2020 ASME Code for Pressure Piping, B31.1
- (3) 2019 ASME PVHO-1 Safety Standard for Pressure Vessels for Human  
Occupancy
- (4) 2017 ANSI Z21.10.3 American National Standard for Gas Water Heaters
- (5) 2018 ANSI/ASME CSD-1 American National Standard for Controls and Safety  
Devices for Automatically Fired Boilers
- (6) 2018 ANSI Z223.1 NFPA 54, National Fuel Gas Code
- (7) 2019 ANSI NFPA 85, Boiler and Combustion Systems Hazards Code
- (8) 2019 ANSI/NB-23, National Board Inspection Code
- (9) 2018 ASME Code for Pressure Piping B31.1
- (10) 2012 NB-27, Revision 1 (1/13), National Board of Boiler and Pressure Vessel  
Inspectors, A Guide for Blowoff Vessels

Copies of the incorporated materials are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or may be obtained from National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 <http://www.nationalboard.org>, ASME International, Three Park Avenue, New York, NY 10016-5990 <http://www.asme.org>, or American National Standards Institute, at Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 <http://www.ansi.org>.

The 2019 ASME Boiler and Pressure Vessel Code provides requirements for design, fabrication, installation, and inspection of steam generating boilers, and hot water boilers intended for low pressure service that are directly fired by oil, gas, electricity, or coal. It contains appendices which cover approval of new material, methods of checking safety valve and safety relief valve capacity, examples of methods of checking safety valve and safety relief valve capacity, examples of methods of calculation and computation, definitions relating to boiler design and welding, and quality control systems. Rules pertaining to use of the H, HV, and HLW Code symbol stamps are also included.

The updated code develops a new non-mandatory appendix for fabrication of dissimilar metal welds for CSEF steel to austenitic materials, details rules for preheating and inter-pass temperatures, as well as interruption of welding and preheat, replaces elements describing "Authorized Observer" and "Laboratory Quality Control System" requirements with applicable references to ASME CA-1, adds four new "for information only" tables for BPV IV stress values, modernizes parts HC-403, HC-520, HA-404 and HA-504 to allow for the use of electronic signatures, adopts the 2016 Edition of ASNT SNT-TC-1a, adopts the 2016 Edition of ANSI/ASNT CP-189, revises Paragraph U-2(g) of Div. 1, to allow usage of Div. 2 for design methods not provided in Div. 1 as well as other recognized Standards or Codes, revises UG-14 to improve clarity, and to allow for the production of hollow cylindrical components with a greater range of diameters under qualifying conditions, relaxes post forming heat treatment rules in UCS-79 (Div. 1) and para. 6.1.2.3 (Div. 2) for thin wall pipe and tube after cold forming, permits pressure vessels being designed and constructed to the same design specifications to follow a single UDS, and their compliance to the UDS, streamlines the inspection process with regard to acoustic emission examination while maintaining a proper and meaningful inspection result, reduces unnecessarily severe requirements for the qualification test for cyclic fatigue to be more reflective of those in other industry standards that are less severe, yet which have proven safe for over 25 years eliminating the an artificial barrier to qualification of Section X Class III pressure vessels, clarifies requirements for stress calculations, revises fatigue test procedure, and revised burst test procedure to set the maximum allowable pressurization rate at 200 psi/sec, which is common within the industry.

The 2020 ASME Code for Pressure Piping, B31.1 details the design, materials,

fabrication, erection, test, inspection, operation, and maintenance of piping systems. Piping used with the Code includes pipe, flanges, bolting, gaskets, valves, pressure-relieving valves/devices, fittings, and the pressure-containing portions of other piping components.

The updated code contains numerous changes crucial for keeping the standard current, the list of updates in the beginning of the document comprises six pages. These changes include the allowance of either U.S. Customary (USC) or International System (SI, also known as metric) units, and the addition of new definitions for ferrous material, linear indication, rounded indication, maintenance, nonferrous, post weld hydrogen bakeout, and volumetric examination, special provisions for testing piping components and subassemblies, closure welds, and flanged joints, and new procedures as an alternative to hydrostatic and pneumatic testing,

The 2019 ASME PVHO-1 Safety Standard for Pressure Vessels for Human Occupancy provides requirements for the design, fabrication, inspection, testing, marking, and stamping of pressure vessels for human occupancy, having an internal or external pressure differential exceeding 2 psi. This Standard also provides requirements for the design, fabrication, inspection, testing, cleaning, and certification of piping systems for PVHOs. PVHOs include, but are not limited to, submersibles, diving bells, personnel transfer capsules, decompression chambers, recompression chambers, hyperbaric chambers, high altitude chambers, and medical hyperbaric oxygenation facilities.

The updated standard continues the work to address complete PVHO systems and PVHOs made from nonstandard materials. In support of this work, definitions in Mandatory Appendix II and various forms were added or updated to reflect the differences in approach to documenting the entire PVHO system as a whole, rather than as single or multiple pressure vessels /chambers. Additionally, changes were made to this edition in efforts to clarify several design standards and requirements for easier understanding and implementation by all users of this Standard.

The American National Standard for Gas Water Heaters, ANSI Z21.10.3 2017, applies to newly produced, large automatic storage water heaters having input ratings above 75,000 Btu/hr, instantaneous water heaters, circulating water heaters including booster water heaters, hereinafter referred to as water heaters or appliances, constructed entirely of new, unused parts and materials for use with: (1) natural gas, (2) manufactured gas, (3) mixed

gas, (4) liquefied petroleum gases, (5) LP gas-air mixtures, (6) liquefied petroleum gases only for recreational vehicle installation, (7) natural gas and liquefied petroleum gases when provision is made for the simple conversion from one gas to the other, for manufactured home (mobile home) installation, (8) natural gas and liquefied petroleum gases when provision is made for the simple conversion from one gas to the other, for recreational vehicle installation, and (9) combination potable water/space heating applications. This Standard also applies to water heaters with draft hoods which are factory equipped with automatic vent damper devices, and water heaters of other than the direct vent type which are factory equipped with electrically operated or mechanically actuated automatic flue damper devices.

The updated standard adds the requirement to provide means to vent gases to the outdoors for Category II, III, IV, and direct vent water heaters, new instruction manual requirements for Category II, III and IV water heaters, new marking requirements on rating plate for Category II, III and IV water heaters, new marking requirements for Type B vent water heaters, new marking requirements for Category II, III and IV water heaters, a category determination test, a test clause titled, "Capacities of tube type water heater" to determine the capacity of tube type water heaters to identify those models subject to a standby loss requirement. a revised hydrostatic pressure test to clarify that only the heat exchanger of a non-tank type water heater is hydrostatically tested, a vent system leakage test for Category II, III, or IV water heaters, and a clause titled, Method of test for measuring standby loss for tube type instantaneous water heaters with 10 or greater gallons of storage, because the current test for measuring standby loss is not applicable for gas-fired instantaneous water heaters, which is subject to US Federal maximum standby loss requirements.

The American National Standard for Controls and Safety Devices for Automatically Fired Boilers, ASME CSD-1-2018, covers requirements for the assembly, installation, maintenance, and operation of controls and safety devices on automatically operated boilers directly fired with gas, oil, gas-oil, or electricity, having fuel input ratings under 12,500,000 Btu/hr.

The updated code incorporates new and revised controls that were not covered in the 2006 version. This included fire eye control, pressure controls, and water level controls.

The 2018 ANSI Z223.1 NFPA 54, National Fuel Gas Code, provides industry-accepted guidance for the safe installation and operation of fuel gas piping systems, appliances, equipment, and accessories.

The 2018 edition includes updates based on recognized risks, recent research, and the techniques, materials, developments, and construction practices in use today. The 2018 edition includes revisions to piping requirements, which allows listed arc-resistant jacket or coated CSST to use the appliance's electrical grounding connector as the bonding means and recognizing stainless steel smooth wall pipe and tubing products as acceptable piping materials. Other changes include revising the minimum allowed wall thickness of carbon and stainless-steel pipe, permitting press-connect fittings as an acceptable joining method for pipe, and revising the venting requirements include requiring listing to the appropriate UL standards for plastic venting materials, factory-built chimneys, Type B and BW vents, chimney lining systems, and special gas vents.

The 2019 ANSI NFPA 85, Boiler and Combustion Systems Hazards Code, gives guidelines for boiler operator and maintenance training, as well as guidance for the strength of the structure, combustion and draft control equipment, interlocks, alarms, and other related controls that are essential to the safe operation of boilers and combustion systems and addresses minimum guidelines for the installation, operation, and maintenance of boilers. This code covers many types of boilers, such single and multiple burner boilers, atmospheric fluidized bed boilers, heat recovery steam generators, pulverized fuel systems, and stokers.

The updated code incorporates new and revised definitions for interlock, trip, and permissive and correlated terms related to these for consistency, adds new language to stipulate specification of auto ignition temperature for fuels over the range of expected operating conditions, specifies the allowed uses of Class 2 and Class 3 igniters, provides guidance on the frequency of testing for Multiple Burner Boiler interlocks, clarifies and revises operational leak test frequencies to specify the test, and clarifies that a combustion turbine purge is not needed on subsequent starts if purge credit is maintained.

The 2019 ANSI/NB-23 National Board Inspection Code, recognizes three important areas of post-construction activities where information, understanding, and following specific requirements will promote public and personal safety; these areas are installation,

inspection, and repairs and alterations. The NBIC provides rules, information, and guidance for post-construction activities.

The updated code redefines the requirements for pressure relief valves and adds test procedures and frequency requirements.

The 2018 ASME Code for Pressure Piping B31.1 prescribes minimum requirements for the design, materials, fabrication, erection, test, and inspection of power and auxiliary service piping systems for electric generation stations, industrial institutional plants, central and district heating plants.

The updated code adds the requirement that when outside of the Code the measures are to be documented in the engineering design, changes the ASME Certification Mark from ASME BPVC Section I to ASME CA-1 Conformity Assessment Requirement, adds an advisory that the cleaning and purging of flammable gas systems by be subject to the requirements of NFPA Standard 26, adds definitions of austenitizing; heat treatments, subcritical heat treatment; and heat treatments, tempering, revises definitions of covered piping systems (CPS), failure, heat treatments, reinforcement of weld, repair, and undercut, includes the requirement that metallic bellows expansion joints shall be in accordance with Mandatory Appendix P. which is compatible with standards by the Expansion Joint Manufacturers Association, Inc. (EJMA), removes Non Mandatory Appendix VI, and replaces certification requirements of many sections in the BPVC with ASME CA-1 Conformity Assessment Requirements which specifies the requirements for accreditation and certification of organizations supplying products and or services that are intended to conform the requirements of ASME standards.

The 2012 National Board of Boiler and Pressure Vessel Inspectors, A Guide for Blowoff Vessels, NB-27, Revision 1 (1/13) provides design information and guidance for boiler blowoff systems. If the design of boiler blowoff equipment is not covered in this publication, guidance should be obtained from both a competent engineering firm and the inspection authority of the jurisdiction in which the equipment is to be installed. The treatment of boiler water is an integral part of boiler operation, used to control scaling, corrosion, and deposits. Boiler water treatment often leads to the formation of solid particles that are initially suspended in the boiler water. Solids concentrated in boiler water tend to promote foaming and scaling with a resultant loss of heat transfer which may result

in overheating of the boiler tubes. Solids also may settle to the bottom of the boiler to form sludge. “Blowing off” part of the boiler water is a means of removing solids from the water while controlling boiler water levels.

The updated guide requires a 4” level drop for blowoff time and specifies the blowdown tank design and the linear formula used based on the diameter to ensure expanding steam won’t build up.

In addition to the incorporation of the codes and standards listed above, the proposed amendments define electric boilers, direct fired pressure vessel, pressure vessel, PVHO, and unfired steam boiler, revise the definitions for the ASME Code, boiler, forced circulation hot water heater, national board registration number, and state identification number, bring the Boiler Advisory Board rule into compliance with the current version of A.R.S. §23-374 by repealing the rule, clarify the language in the rules to better define which rules apply to which owners, set forth a timeline for compliance with A.R.S. §23-485(D), update the requirements for an inspection report, clarify the frequency of inspection for a power boiler, clarify the frequency of internal inspections for boilers, adjust the requirements for preparation of inspection of a boiler, amend the procedure for obtaining a special inspector certificate which partially conflicts with A.R.S. §23-485, and update requirements for flow sensing devices.

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

The Commission did not review or rely on any study relevant to the proposed amended rules.

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

Not applicable.

**9. A summary of the economic, small business and consumer impact:**

The Industrial Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce

regulatory burden by eliminating incorrect or confusing language in the current rules to allow for the affected stakeholders to have a clearer understanding of what is required. Additionally, by adopting the most current standards and codes the amendments would facilitate stakeholders in using more modern technology which may provide a cost benefit.

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

R20-5-404(A)(8) was amended to include the following phrase: “This incorporation does not include any later amendments or editions of the incorporated matter”, to comply with A.R.S. § 41-1028(B).

**11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

No public comment was received regarding the proposed rulemaking.

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

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

The proposed amended rules do not require issuance of a regulatory permit or license.

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

There is not a federal law applicable to the subject of the proposed rulemaking.

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

No analysis was submitted.

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

The Industrial Commission of Arizona is proposing to incorporate by reference the following national consensus standards:

- (1) 2019 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VI, VII, VIII  
Division 1, 2, 3, IX, X and
- (2) 2020 ASME Code for Pressure Piping, B31.1
- (3) 2019 ASME PVHO-1 Safety Standard for Pressure Vessels for Human  
Occupancy
- (4) American National Standard for Gas Water Heaters, ANSI Z21.10.3 2017
- (5) American National Standard for Controls and Safety Devices for Automatically  
Fired Boilers, ANSI/ASME CSD-1-2019
- (6) ANSI Z223.1 NFPA 54, National Fuel Gas Code 2018
- (7) ANSI NFPA 85, Boiler and Combustion Systems Hazards Code, 2019 edition
- (8) National Board Inspection Code, ANSI/NB-23-2019
- (9) 2018 ASME Code for Pressure Piping B31.1
- (10) National Board of Boiler and Pressure Vessel Inspectors, A Guide for Blowoff  
Vessels, NB-27, Revision 1 (1/13) 2012 Edition

Copies of the incorporated materials are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or may be obtained from National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 <http://www.nationalboard.org>, ASME International, Three Park Avenue, New York, NY 10016-5990 <http://www.asme.org>, or American National Standards Institute, at Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 <http://www.ansi.org>.

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

Not applicable.

**15. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE  
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

## ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

### Section

- R20-5-401. **Applicability**
- R20-5-402. **Definitions**
- R20-5-403. **~~Boiler Advisory Board~~ Repealed**
- R20-5-404. **Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels**
- R20-5-406. **Repairs and Alterations**
- R20-5-407. **Inspection of Boilers, Lined Hot Water Storage Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates**
- R20-5-408. **Frequency of Inspection**
- R20-5-409. **Notification and Preparation for Inspection**
- R20-5-410. **Report of Accident**
- R20-5-411. **Hydrostatic Tests**
- R20-5-412. **Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices**
- R20-5-413. **Safety and Safety Relief Valves**
- R20-5-415. **Boiler Blowdown, Blowoff Equipment and Drains**
- R20-5-416. **Maximum Allowable Working Pressure**
- R20-5-417. **Maintenance and Operation of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles**
- R20-5-418. **Non-standard Boilers**
- R20-5-419. **Request to Reinstall Boiler or Lined Hot Water Heater**
- R20-5-420. **Special Inspector Certificate under A.R.S. § 23-485**
- R20-5-429. **Variance**
- R20-5-430. **Forced Circulation Hot Water Heaters**
- R20-5-431. **Code Cases**
- R20-5-432. **Historical Boilers**

### R20-5-401. **Applicability**

This Article applies to all ~~boilers~~ Boilers, ~~lined hot water heaters~~ Lined Hot Water Heaters, and ~~pressure vessels~~ Pressure Vessels operated in Arizona, except the following:

1. ~~Boilers, lined hot water heaters~~ Lined Hot Water Heaters, and ~~pressure vessels~~ Pressure Vessels regulated by the United States Government;

2. Boilers, ~~lined hot water heaters~~ Lined Hot Water Heaters, and ~~pressure vessels~~ Pressure Vessels operated in private residences or ~~apartment complexes~~ Apartment Complexes of not more than six units; and
3. Boilers, ~~lined hot water heaters~~ Lined Hot Water Heaters, and ~~pressure vessels~~ Pressure Vessels operated on Indian reservations.
4. A ~~lined hot water heater~~ Lined Hot Water Heater that does not exceed any of the following:
  - a. Heat input of 200,000 ~~British thermal units per hour~~ BTU/hr;
  - b. Water temperature of 210° F; ~~and or~~
  - c. Nominal water containing capacity of 120 gallons.
5. An electric Boiler that does not exceed either of the following:
  - a. Tank volume of one-and-a-half cubic feet; or
  - b. MAWP of one hundred pounds per square inch or less, with a pressure relief system to prevent excess pressure.

**R20-5-402. Definitions**

~~In this Article, unless the text otherwise requires~~ In addition to the definitions provided in A.R.S. § 23-471, the following definitions apply to this Article:

1. “Act” means A.R.S. Title 23, Chapter 2, Article 11.
2. “Alteration” ~~or “alteration”~~ means any change in the item described on the original manufacturer’s data report which affects the pressure-containing capability of the ~~boiler~~ Boiler or ~~pressure vessel~~ Pressure Vessel, including but not limited to:
  - a. Non-physical changes such as an increase in the MAWP either internal or external, or
  - b. A reduction in minimum design temperature of a ~~boiler~~ Boiler or ~~pressure vessel~~ Pressure Vessel requiring additional mechanical tests.
3. “ANSI” means American National Standards Institute, Inc., ~~located at 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.~~
4. “Apartment ~~house~~ Complex” means a building with multiple family dwelling units, ~~not used for commercial purposes, including condominiums and townhouses,~~ where ~~boilers~~ Boilers are located in a common area outside of the individual ~~dwelling units, such as a~~ Boiler room.
5. “Applicant” means an individual requesting permission to act as a ~~special inspector~~ Special Inspector under A.R.S. § 23-485.
6. “ASME ~~Code~~” means the American Society of Mechanical Engineers ~~Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII and IX, published by ASME International.~~
7. “ASME International” means a ~~not for profit professional organization that promotes the art, science and practice of mechanical and multidisciplinary engineering and allied sciences throughout the world~~
8. “Authorized Inspector” means an ~~authorized representative~~ Authorized Representative under A.R.S. § 23-471(1) or a ~~special inspector~~ Special Inspector under A.R.S. § 23-485.
9. “Authorized representative” means the boiler chief or boiler inspector employed ~~by the Division.~~

10. “Blowdown ~~tank~~ Tank” or “Blowdown ~~separator~~ Separator” means an ASME-stamped vessel designed to receive discharged steam or hot water from a ~~boiler~~ Boiler blowoff or blowdown piping system.
11. “Boiler” means a closed vessel in which fluid is heated for use external to itself, by the direct application of heat from the combustion of fuel, solid, liquid, or gaseous, or by the use of electricity.  
“BTU” means British thermal units.
12. “Certificate of Competency” means a person who has passed the National Board Exam.
13. “Certificate Inspection” means an internal inspection, when construction allows; otherwise, it means as complete an inspection as possible.
14. “Condemned” means a ~~boiler~~ Boiler or ~~lined hot water heater~~ Lined Hot Water Heater that has been inspected and found to be unsafe by ~~an~~ the ~~Director or authorized inspector~~ Authorized Inspector and has been stamped or tagged with the code XXX AZ8 XXX.
15. “CSD-1” means Controls and Safety Devices for Automatically Fired Boilers, published by ASME ~~International~~, incorporated by reference in R20-5-404(A)(4).
16. “~~Direct fired jacketed steam kettle~~ Fired Jacketed Steam Kettle” means a ~~pressure vessel with inner and outer walls that is subject to steam pressure and stress, is used~~ to boil or heat liquids or to cook food, and falls under the scope of Section VIII, Division 1, Appendix 19 (Electrically Heated or Gas Fired Jacketed Steam Kettles) of the ASME Boiler and Pressure Vessel Code incorporated by reference in R20-5-404(A). ~~jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket’s walls.~~
17. “~~External inspection~~ Inspection” means an examination of a ~~boiler~~ Boiler or ~~lined hot water heater~~ Lined Hot Water Heater performed by an ~~authorized inspector~~ Authorized Inspector when the ~~boiler~~ Boiler or ~~lined hot water heater~~ Lined Hot Water Heater is in operation.
18. “~~Forced circulation~~ Circulation ~~hot water heater~~ Lined Hot Water Heater” means a Lined hot water heater Hot Water Heater used for potable water, a Lined hot water heater Hot Water Heater requiring movement of water to prevent overheating and failure of the tubes or coils, and has no definitive waterline.
19. “Fully ~~attended power boiler~~ Attended Power Boiler” means a ~~power boiler~~ Power Boiler that is operated by an individual who meets the requirements of R20-5-408(~~C~~-D), and whose primary function is the care, maintenance, and operation of the ~~boiler~~ Boiler and the equipment associated with the ~~boiler~~ Boiler system.
20. “High temperature water boiler” means a boiler in which water or other fluid is heated and operates at a pressure in excess of 160 psig (1.1 MPa) and/or temperature in excess of 250° F.
21. “Historical ~~boilers~~ Boilers” means steam ~~boilers~~ Boilers of riveted construction, preserved, restored, or maintained for hobby or demonstration use.  
“HS” means heating surface.
22. “Inspection certificate Certificate” means a document issued by the Division for operation of a ~~boiler~~ Boiler, ~~lined hot water heater~~ Lined Hot Water Heater, or

- direct fired-jacketed steam kettles Direct Fired Jacketed Steam Kettle when a certificate inspection Certificate Inspection has been successfully completed.
- 23: “Internal ~~inspection~~ Inspection” means a complete examination of the internal and external surfaces of a ~~boiler~~ Boiler or ~~lined hot water heater~~ Lined Hot Water Heater by an ~~authorized inspector~~ Authorized Inspector after the ~~boiler~~ Boiler or ~~water heater~~ Lined Hot Water Heater is shut down.
- Heater Lined Hot Water Heater is shut down.
- 24: “Kw” means kilowatt.
- “Lined hot water heater” means the same as lined hot water storage heater defined in A.R.S. § 23-471(10) as a vessel which is closed except for openings through which water can flow, that includes the apparatus by which heat is generated and on which all controls and safety devices necessary to prevent pressures greater than 160 psig (1100 kPa gage) and water temperature greater than 210° F are provided, in which potable water is heated by the combustion of fuels, electricity, or any other heat source and removed for external use.
- 25: “MAWP” means maximum allowable working pressure.
- 26: “National Board Commissioned Inspector” means an individual who holds a valid and current National Board Commission issued by the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.
- 27: “National Board Registration Number” means a unique number issued to a ~~boiler~~ Boiler, ~~Lined hot water heater~~ Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel by the manufacturer and recorded with the National Board of Boiler and Pressure Vessel Inspectors.
- 28: “NFPA” means National Fire Protection Association.
- 29: “Non-Standard Boiler” means any ~~boiler~~ Boiler, ~~Lined hot water heater~~ Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel that is not constructed or maintained to the standards incorporated by reference of this Article.
- “Out of Service” means to either: (1) physically sever or disconnect all sources of energy (water, gas, fuel, electricity, etc.); cap all fuel lines; and disconnect or remove all electrical lines from the ~~Boiler, Lined Hot Water Heater, or Pressure Vessel~~; or (2) to lock out and tag out the ~~Boiler, Hot Water Heater, or Pressure Vessel~~ per 29 C.F.R. §1910.147, OSHA, General Industry Regulations.
- 30: “Owner” or “Operator” means any individual or organization, including this state and all political subdivisions of this state, who have title, control or duty to control, vessels, the operation of one or more boilers, lined hot water heaters or pressure vessels.
- 31: “Portable ~~boiler~~ Boiler” means a ~~boiler~~ Boiler permanently affixed to a trailer with wheels, that is totally self-contained while operating, and not attached to any other object either by pipe, hose, or wire.
- “PVHO” means Pressure Vessels for Human Occupancy.
- 32: “Relief ~~valve~~ Valve” means an ASME-stamped automatic pressure relieving device designed for liquid service which is actuated by the pressure upstream of the valve and opens further with an increase in pressure above the stamped pressure.
- 33: “Repairs” means work necessary to restore a ~~boiler~~ Boiler, ~~lined hot water heater~~ Lined Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel to operating condition that complies with this Article.

34. ~~“Safety relief valve Relief Valve”~~ means an ASME-stamped automatically pressure-actuated relieving device designed for use either as a ~~safety valve~~ Safety Valve or as a ~~relief valve~~ Relief Valve.
35. ~~“Safety valve Valve”~~ means an ASME-stamped automatic pressure relieving device designed for steam or vapor service which is actuated by the pressure upstream of the valve and characterized by full opening pop-action.
36. ~~“Secondhand”~~ means a ~~boiler~~ Boiler, ~~lined hot water heater~~ Lined Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel that has changed both location and ownership since original installation.  
~~“Serves” means either mailing to the last known address of the receiving party, or transmitting by other means, including electronic transmission, with the written consent of the receiving party.~~
37. ~~“Shelter”~~ means a permanent structure that provides protection from the weather.
38. ~~“Special Inspector”~~ means ~~any authorized an~~ inspector who is issued an Arizona Commission ~~but is not employed by the State of Arizona~~ Special Inspector Certificate under R20-5-420.
39. ~~“State Identification Number”~~ means a unique number assigned by the Division to a ~~boiler~~ Boiler, ~~hot water heater~~ Lined Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel installed in Arizona.
40. ~~“User”~~ means a person or entity that does not have legal title to a ~~boiler~~ Boiler, ~~lined hot water heater~~ Lined Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel, but has control and responsibility for the operation of a ~~boiler~~ Boiler, ~~lined hot water heater~~ Lined Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel.

**R20-5-403. Boiler Advisory Board Repeal**

~~A. Members of the boiler advisory board appointed by the Commission pursuant to A.R.S. § 23-474(2) §23-486 shall serve for a period of three years. At the end of each three-year term, the Commission may extend a member’s term an additional three years or replace any member with an individual representing similar interest within the industry. The board shall be composed of persons in the boiler industry and shall be balanced in representation with respect to industry, owner/operators, labor and the public.~~

~~B. The board shall hold an annual meeting and such other meetings as may be appropriate and shall conduct business at times and places arranged by the Commission.~~

**R20-5-404. Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels**

A. The following apply to this Article:

1. An ~~owner~~ Owner, Operator, or user User, of a ~~boiler~~ Boiler, Lined Hot Water Heater or Pressure Vessel installed, repaired, replaced, or reinstalled in Arizona, six months after the effective date of this Article shall comply with the ~~2007-2019~~ 2007-2019 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, ~~VI, VII, VIII~~ VI, VII, VIII Division 1, 2, 3, IX, ~~X and B31.1 Power Piping, and addenda as of July~~ X and B31.1 Power Piping, and addenda as of July ~~1, 2007, ASME 2020~~ 1, 2007, ASME 2020 Code for Pressure Piping B31.1, and 2019 ASME PVHO-1 Safety Standard for Pressure Vessels for Human Occupancy incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the

ASME ~~International~~ at Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.

2. An ~~owner~~ Owner, Operator, or user User, of a ~~boiler~~ Boiler, ~~lined hot water heater~~ Lined Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel installed, repaired, replaced, or reinstalled in Arizona, before the effective date of this Article shall comply with subsection (A)(1), or the ASME Boiler and Pressure Vessel Code in effect at the time of the last installation, repair, replacement, or reinstallation of the ~~boiler~~ Boiler, ~~lined hot water heater~~ Lined Hot Water Heater, or ~~pressure vessel~~ Pressure Vessel in Arizona.
3. An ~~owner~~ Owner, Operator, or user User of a gas-fired ~~lined hot water heater~~ Lined Hot Water Heater installed, operated, repaired, replaced, or reinstalled in Arizona shall comply with the American National Standard for Gas Water Heaters, ANSI Z21.10.3 ~~2004~~ 2017, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
4. An ~~owner~~ Owner, Operator, or user User, of a ~~boiler~~ Boiler installed, repaired, replaced, or reinstalled in Arizona after the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers, ANSI/ASME CSD-1-~~2006~~ 2018, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the ASME ~~International~~, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.
5. An ~~owner~~ Owner, Operator, or user User, of a ~~boiler~~ Boiler installed, repaired, replaced, or reinstalled in Arizona before the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers in effect at the time of the last installation, repair, replacement or reinstallation of a ~~boiler~~ Boiler in Arizona. As an alternative, an ~~owner~~ Owner, Operator, or user User, of a ~~boiler~~ Boiler described in this subsection may comply with subsection (A)(4).
6. A permanent source of outside air shall be provided for each ~~boiler~~ Boiler and ~~lined hot water heater~~ Lined Hot Water Heater room to assure complete combustion of the fuel as required by ANSI Z223.1-~~2018~~ 2006, NFPA 54, National Fuel Gas Code incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI ~~the American National Standards Institute~~, at Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>
7. All new Power Boilers installed after the effective date of this subsection, having power piping, welded or mechanically assembled, (pipe, valves, and fittings) falling within the scope of ASME Code, Section I, shall be designed, constructed and listed on

the appropriate ASME Code, Section I, manufacturer's data report, P- 2A, P-4A, P-4B, P-6 as applicable, incorporated by reference in R20-5-404(A)(1).

8. An Owner, Operator, or User, of a Boiler installed, repaired, replaced, or reinstalled in Arizona having a capacity equal to or greater than 12,500,000 BTU/hr input after the effective date of this subsection shall comply with ANSI NFPA 85, Boiler and Combustion Systems Hazards Code, 2019 edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, at Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>

B. The following registration requirements apply to this Article;

1. All ~~boilers~~ Boilers, and ~~lined hot water heaters~~ Lined Hot Water Heaters, and Pressure Vessels, including reinstalled and ~~secondhand~~ Secondhand boilers Boilers, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors except for:

- a. ~~Non-s~~Standard boilers Boilers installed up to six months after the effective date of this Section ~~section~~,
- b. Cast iron ~~boilers~~ Boilers, and
- c. Cast aluminum ~~boilers~~ Boilers.

2. All fired and unfired ~~pressure vessels~~ Pressure Vessels installed or reinstalled on or after July 1, 2009, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors.

C. The following installation, maintenance, and repair requirements apply to this Article.

1. An ~~owner~~ Owner, Operator, or user User shall ~~keep~~ maintain a signed copy of the Manufacturer's Data Report, and Manufacturer's/Installing Contractors Report for ASME CSD-1, if applicable for a ~~boiler~~ Boiler, or ~~lined hot water heater~~ Lined Hot Water Heater, or Pressure Vessel at the location of the ~~boiler~~ Boiler; or ~~lined hot water heater~~ Lined Hot Water Heater, or Pressure Vessel and make the reports available for review upon request from an ~~authorized inspector~~ Authorized Inspector.

2. A ~~boiler~~ Boiler shall have masonry or structural supports of sufficient strength and rigidity to safely support the ~~boiler~~ Boiler and its contents without any vibration in the ~~boiler~~ Boiler or its connecting piping.

3. There shall be at least 36 in. (915 mm) of clearance on each side of the ~~boiler~~ Boiler or ~~lined hot water heater~~ Lined Hot Water Heater. Alternative clearances according to the manufacturer's recommendations are subject to approval by ~~the Division~~ an Authorized Inspector prior to installation of a ~~boiler~~ Boiler, or ~~lined hot water heater~~ Lined Hot Water Heater or Pressure Vessel.

4. A ~~boiler~~ Boiler with a manhole shall have at least five feet clearance between the ~~boiler~~ Boiler manhole and any wall, ceiling, or piping.

5. A newly constructed ~~boiler~~ Boiler room in excess of 500 square feet of floor area and containing one or more ~~boilers~~ Boilers with a fuel capacity of 1,000,000 BTU-~~per hour~~ /hr or a heating capacity greater than 285 Kw (electric), shall have at least two exits on each level of the ~~boiler~~ Boiler or ~~boilers~~ Boilers. The ~~owner or user~~ Owner, Operator, or User shall ensure each exit is remotely located from other exits.

6. An ~~owner~~ Owner, Operator, or user User shall keep a Boiler, boiler or Lined Hot Water Heater, or Pressure Vessel ~~lined hot water heater~~ room clean and with no obstructions to the ~~boiler~~ Boiler, or lined hot water heater Lined Hot Water Heater, or Pressure Vessel.
7. An ~~owner~~ Owner, Operator, or user User shall not store flammable or explosive materials in a Boiler boiler or Lined Hot Water Heater ~~lined hot water heater~~ room.
8. An ~~owner~~ Owner, Operator, or user User shall not store combustibles any less than three feet from any part of a ~~boiler~~ Boiler, or lined hot water heater Lined Hot Water Heater, or Pressure Vessel.
9. If a ~~boiler~~ Boiler, or lined hot water heater Lined Hot Water Heater, or Pressure Vessel is moved outside Arizona for temporary use or ~~repairs~~ Repairs, the ~~owner~~ Owner, Operator, or user User shall not reinstall the ~~boiler~~ Boiler, or lined hot water heater Lined Hot Water Heater, or Pressure Vessel in Arizona until ~~the owner or user~~ notifies and receives receiving verbal or written approval from the Division under R20-5-419 ~~to reinstall the boiler or lined hot water heater~~. If the Division grants approval ~~to reinstall the boiler or lined hot water heater~~, the ~~owner~~ Owner, Operator, or user User shall not operate the reinstalled ~~boiler~~ Boiler, or lined hot water heater Lined Hot Water Heater, or Pressure Vessel until ~~the owner or user~~ receives receiving an ~~inspection certificate~~ Inspection Certificate from the Division under this Article.
10. Before a new ~~power boiler~~ Power Boiler or a ~~used or s~~ Secondhand boiler Boiler or ~~pressure vessel~~ Pressure Vessel is installed, an inspection in accordance with R20-5-408 shall be made by an ~~authorized inspector of this state~~ Authorized Inspector or by a National Board Commissioned Inspector. This inspection is to assess the integrity of the vessel and evaluate the original design specification. Prior to installation, an application shall be filed by the ~~owner~~ Owner, Operator, or user User of the ~~boiler~~ Boiler or pressure vessel Pressure Vessel with the Division for approval. This application shall contain the following information:
  - a. Name of the ~~owner or user~~ Owner, Operator, or User;
  - b. Mailing address of ~~owner or user~~ Owner, Operator, or User;
  - c. Business telephone number of ~~owner or user~~ Owner, Operator, or User;
  - d. Installation name and address;
  - e. Installation date;
  - f. Start up date;
  - g. Name and address of ~~boiler/pressure vessel~~ Boiler or Pressure Vessel insurance company;
  - h. Arizona serial number of the ~~boiler/pressure vessel~~ Boiler or Pressure Vessel being replaced, if applicable;
  - i. Description of the new, ~~used or s~~ Secondhand power boiler/ pressure vessel Power Boiler or Pressure Vessel as to include:
    - i. Manufacture's name,
    - ii. Date manufactured,
    - iii. ~~Maximum allowable pressure~~ MAWP or temperature of ~~boiler/pressure vessel~~ Boiler or Pressure Vessel, and
    - iv. National Board registration number;

- j. Name, address, business phone number, cell phone number, fax number and state contractor's license number of company or individual that will be installing the ~~object~~ Boiler or Pressure Vessel;
  - k. Name, title, and phone number of the contact person on the site of installation; and
  - l. Signature, title, and date of the person submitting the application.
11. Before the ~~owner~~ Owner, Operator, or user User installing a ~~used~~ Secondhand boiler Boiler or pressure vessel Pressure Vessel, the ~~boiler or pressure vessel~~ Boiler or Pressure Vessel shall pass a hydrostatic test that is witnessed by an ~~authorized inspector, authorized representative~~ Authorized Inspector or by any National Board Commissioned inspector in accordance with R20-5-411.
12. An ~~owner~~ Owner, Operator, or user User of a ~~portable boiler~~ Portable Boiler shall notify an ~~authorized inspector~~ Authorized Inspector before installing the ~~portable boiler~~ Portable Boiler and shall not operate the ~~portable boiler~~ Portable Boiler until the ~~owner~~ Owner, Operator, or user User receives an ~~inspection certificate~~ Inspection Certificate from the Division.

**R20-5-406. Repairs and Alterations**

- A. If ~~repairs~~ Repairs or Alterations may affect the working pressure or safety of a ~~boiler~~ Boiler, Lined Hot Water Heater, or Pressure Vessel, an ~~owner, user, or operator~~ Owner, Operator, or User shall consult with an ~~authorized inspector~~ Authorized Inspector before having the ~~repairs~~ Repairs or Alterations made. The ~~authorized inspector~~ Authorized Inspector shall provide the ~~owner, user, or operator~~ Owner, Operator, or User information regarding the best method to repair or alter the ~~boiler~~ Boiler, Lined Hot Water Heater, or Pressure Vessel. The ~~owner, user, or operator~~ Owner, Operator, or User shall ensure that an ~~authorized inspector~~ Authorized Inspector inspects and approves the ~~repairs~~ Repairs and Alterations after the ~~repairs~~ Repairs or Alterations are made.
- B. Repairs and Alterations to ~~boilers~~ Boilers, Lined Hot Water Heaters, or Pressure Vessels shall conform to the applicable provisions of the National Board Inspection Code, ANSI/NB-23-~~2007~~ 2019 and ~~2007~~ addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- C. An ~~owner or user~~ Owner, Operator, or User shall not permit an individual to remove or repair a safety appliance of a ~~boiler~~ Boiler, or lined hot water heater Lined Hot Water Heater, or Pressure Vessel in operation. An ~~owner or user~~ Owner, Operator, or User shall not permit a person to remove or repair a safety appliance of a ~~boiler~~ Boiler, or lined hot water heater Lined Hot Water Heater, or Pressure Vessel not in operation except as provided under the ASME Code. If an ~~owner or user~~ Owner, Operator, or User permits a person to remove a safety appliance from a ~~boiler or lined hot water heater~~ Boiler, Lined Hot Water Heater, or Pressure Vessel as provided under the ASME Code, then the ~~owner or user~~ Owner, Operator, or User shall ensure that the safety appliance is reinstalled in proper working order before the ~~boiler or lined hot water heater~~ Boiler, Hot Water Heater, or Pressure Vessel is placed back into operation.

- D. No person shall alter in any manner a ~~safety valve~~ Safety Valve, ~~relief valve~~ Relief Valve, or ~~safety relief valve~~ Safety Relief Valve, except by an organization qualified in accordance with The National Board Inspection Code, ANSI/NB-23 ~~2007~~ 2019 Edition, ~~and 2007 addenda~~ incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- E. Repairs of fittings or appliances shall comply with the requirements of the National Board Inspection Code, ANSI/NB-23-~~2007~~ 2019 Edition, ~~and 2007 addenda~~ incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- F. ~~Beginning six months after the effective date of this Section~~ On or after the effective date of this subsection, replacement of fittings or appliances shall comply with the requirements of the ~~2019~~ 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VI, VII, VIII, Division 1, 2, 3, ~~and IX, X~~ and 2018 ASME Code for Pressure Piping B31.1, Power Piping, and addenda incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007. A copy of the incorporated material may also be obtained from ASME ~~International~~, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org>.

**R20-5-407. Inspection of Boilers, Lined Hot Water Storage Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates**

- A. An ~~authorized inspector~~ Authorized Inspector shall comply with the guidelines set forth in The National Board Inspection Code, ANSI/NB-23 ~~2007~~ 2019 Edition, ~~and 2007 addenda~~, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- B. If an ~~owner, user, or operator~~ Owner, Operator, or User fails to comply with the requirements for an inspection or pressure test under this Article, the Division shall withhold the ~~inspection certificate~~ Inspection Certificate until the ~~owner, user, or operator~~ Owner, Operator, or User complies with the requirements.
- C. An ~~authorized inspector~~ Authorized Inspector shall not engage in the sale of any object or device relating to, ~~boilers, lined hot water heaters, direct fired jacketed steam kettles or equipment associated with, boilers, or lined hot water heaters or direct fired jacketed steam kettles~~ Boilers, Lined Hot Water Heaters, or Direct Fired Jacketed Steam Kettles.

- D. Under A.R.S. § 23-485(D), the Special Inspector shall file ~~the an~~ inspection reports within 30 days of an inspection by entering data into the Division's Web-based inspection entry form, by submitting a paper inspection report issued by the Division, or by electronic transfer of data ~~between the insurance company's database and the Division's database~~. Whatever form of data transfer a Special Inspector chooses, there shall be no cost to the Division. The inspection report shall contain the following:
1. Whether it is a Certificate or non-Certificate ~~inspection~~ Inspection;
  2. Whether it is an ~~internal or external inspection~~ Internal Inspection, External Inspection, or both;
  3. Name of location, address and phone number of the object;
  4. Name, address and phone number of owner or responsible party;
  5. Contact person's name and phone number at the inspection location;
  6. State Identification Number;
  7. Inspection Certificate due date;
  8. Inspection Certificate duration;
  9. Install/reinstall date, if known;
  - 9: 10. Whether the object is active, inactive, Out-of-Service, standby, or scrapped;
  - 10: 11. MAWP permitted or allowed;
  - 11: 12. National Board registration number;
  - 12: 13. Name of the manufacturer and the year the object was built;
  - 13: 14. Special location in plant, if applicable;
  - 0- 15. Boiler type;
  - 0- 16. Purpose of the ~~boiler~~ Boiler;
  - 0- 17. Specify type of fuel used;
  - 0- 18. Whether the firing method is automatic, manual, or unknown;
  - 0- 19. Whether the fuel train is in compliance with CSD-1, NFPA 85, Z21.10.3 or other;
  - 0- 20. Whether the ~~boiler~~ Boiler is fully attended as per R20-5-408(C);
  - 0- 21. ~~Heating Surface/BTU Input/ Kilowatt (Kw) Size/~~input rate, as applicable;
  22. Size classification (HS/BTU/Kw);
  - 21: 23. Whether the heating surface type is stamped, computed, or unknown;
  - 22: 24. Minimum ~~safety valve~~ Safety Valve relief capacity required;
  - 23: 25. Whether the minimum ~~safety valve~~ Safety Valve relief capacity type is BTU/Hr, LBSs/Hr or unknown;
  - 24: 26. Number of temperature/pressure controls, as applicable;
  - 25: 27. Owner number assigned by the ~~owner~~ Owner to specifically identify object's location;
  - 26: 28. Inspection date;
  - 27: 29. Whether the ~~certificate~~ Inspection Certificate is posted;
  - 28: 30. Safety Valve ~~Total Capacity~~ total capacity;
  31. Safety Valve total capacity type (PPH/Hr or BTU/Hr);
  - 29: 32. Safety Valve #1 set pressure;
  - 30: 33. Safety Valve #2 set pressure;
  31. 34. Safety Valve #3 set pressure;
  35. Safety Valve code stamping (Example: V,HV,UV,UV3.TV,TD, OR NV);
  - 32: 36. Whether the object has been hydro tested;
  - 33: 37. Hydro Test (psi), if applicable;

- ~~34.~~ 38. Whether Pressure/Altitude Gage was tested;
- ~~35.~~ 39. Whether ~~of the~~ condition of the object is okay to issue an Inspection Certificate ~~ertificate~~;
- ~~36.~~ 40. Inspection comments, condition of ~~boiler~~ Boiler;
- ~~37.~~ 41. Violations noted;
- ~~38.~~ 42. Inspector name and ~~Arizona Commission~~ Special Inspector number; and
- ~~39.~~ 43. National Board Commission number.

- E. The Division shall issue to an ~~owner~~ Owner, Operator, or user User an ~~inspection certificate~~ Inspection Certificate within 30 calendar days of receipt of an inspection report that documents a ~~boiler, lined hot water heater or direct fired jacketed steam kettle~~ Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle that complies with the Act and this Article. An ~~owner~~ Owner, Operator, or user User of a ~~boiler, lined hot water heater or direct fired jacketed steam kettle~~ Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle shall post the ~~inspection certificate~~ Inspection Certificate in the establishment where the ~~boiler, lined hot water heater or direct fired jacketed steam kettle~~ Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle is located.
- F. An ~~owner, user, or operator~~ Owner, Operator, or User shall ensure ~~than~~ that an ~~authorized inspector~~ Authorized Inspector tags or stamps a steam ~~boiler~~ Boiler with an identification number ~~assigned by the Division~~ immediately after installing, but before operating, a new steam ~~boiler~~ Boiler, or when an ~~authorized inspector~~ Authorized Inspector performs an initial ~~certificate inspection~~ Certificate Inspection of an existing steam ~~boiler~~ Boiler. The identification number shall be at least 5/16" in height and in the following format: AZ-# # # #.
- G. The Division shall mark with a metal dye stamp a ~~boiler or lined hot water heater~~ Boiler or Lined Hot Water Heater identified by the Division as not safe for further service, with the code "XXX AZ8 XXX" which shall designate that the ~~boiler or lined hot water heater~~ Boiler or Lined Hot Water Heater is ~~condemned~~ Condemned.
- H. For any conditions not covered by this Article, the applicable provisions of the ASME Code that was in effect in Arizona at the time of the installation of the ~~boiler or lined hot water heater~~ Boiler or Lined Hot Water Heater shall apply.

**R20-5-408. Frequency of Inspection**

- A. An ~~owner, user, or operator~~ Owner, Operator, or User, of a ~~an existing power boiler~~ Power Boiler; or ~~high temperature boiler~~ High Temperature Water Boiler shall ensure that an ~~authorized inspector~~ Authorized Inspector performs a ~~certificate inspection~~ Certificate Inspection; and/or an External Inspection ~~and~~ prior to operating the Power Boiler or High Temperature Water Boiler. A Certificate Inspection shall also be performed every 12 months thereafter and an external inspection External Inspection of the ~~power boiler~~ Power Boiler or High Temperature Water Boiler shall be performed every 12 months thereafter. An ~~authorized inspector~~ Authorized Inspector shall perform the ~~external inspection~~ External Inspection while the ~~power boiler~~ Power Boiler or High Temperature Water Boiler is in operation to ensure that safety devices ~~of the power boiler~~ are operating properly.
- B. An ~~authorized inspector~~ Authorized Inspector shall perform an ~~internal inspection~~ Internal Inspection and pressure test on a ~~boiler, lined hot water heater or pressure vessel~~ Boiler, Lined Hot Water Heater, or Pressure Vessel if the ~~inspector~~ Authorized Inspector determines from an ~~external inspection~~ External Inspection of the ~~boiler, lined hot water~~

- ~~heater or pressure vessel~~ Boiler, Lined Hot Water Heater, or Pressure Vessel that continued operation ~~of the boiler, lined hot water heater or pressure vessel~~ is a danger to the public or worker safety.
- C. The Division shall issue a 12-month ~~inspection certificate~~ Inspection Certificate to an ~~owner~~ Owner, Operator, or user ~~User~~ to operate a ~~fully attended power boiler~~ Fully Attended Power Boiler if:
1. An ~~owner~~ Owner, Operator, or user ~~User~~ ensures that an ~~authorized inspector~~ Authorized Inspector performs an ~~external safety inspection~~ External Inspection and audit of the operational methods and logs of the ~~fully attended power boiler~~ Fully Attended Power Boiler at least every 12 months and performs an ~~internal inspection~~ Internal Inspection of the ~~fully attended power boiler~~ Fully Attended Power Boiler at least every 36 months; and
  2. Continuous boiler water treatment is under the direct supervision of persons trained and experienced in water treatment for the purpose of controlling and limiting corrosion and deposits; and
  3. Records are available for review, that indicate:
    - a. The date, time, and reason the ~~boiler~~ Boiler is ~~out of service~~ Out of Service; and
    - b. Daily analysis of water samples that adequately show the conditions of the water and elements or characteristics that are capable of producing corrosion or other deterioration to the ~~boiler~~ Boiler or its parts; and
  4. Controls, safety devices, instrumentation, and other equipment necessary for safe operation are current, in service, calibrated, and meet the requirements of an appropriate safety code for the size ~~boilers~~ Boilers, such as NFPA 85, ASME CSD-1 Controls and Safety Devices for Automatically Fired Boilers, National Board Inspection Code ANSI/NB-23, and state requirements; and
  5. Inspection reports of an ~~authorized inspector~~ Authorized Inspector document that the ~~fully attended power boiler~~ Fully Attended Power Boiler complies with ~~A.R.S. § 23-471 et seq.~~ the Act and this Article.
- D. An ~~owner, user, or operator~~ Owner, Operator, or User of a ~~direct-fired jacketed steam kettle~~ Direct-Fired Jacketed Steam Kettle shall ensure that an ~~authorized inspector~~ Authorized Inspector performs a ~~certificate inspection~~ Certificate Inspection of the ~~direct-fired jacketed steam kettle~~ Direct-Fired Jacketed Steam Kettle at the time of installation, and every 24 months thereafter.
- E. An ~~owner, user, or operator~~ Owner, Operator, or User of a steam heating or process boiler ~~Boiler~~, not exceeding 15 p.s.i. ~~maximum allowable working pressure-MAWP~~, steam or vapor, shall ensure that an ~~authorized inspector~~ Authorized Inspector performs a ~~certificate inspection~~ Certificate Inspection and an External Inspection of the heating or process boiler every 24 months.
- F. An ~~owner~~ Owner, Operator, or user ~~User~~ of a hot water heating, ~~or hot water supply boiler~~ Boiler, or ~~lined hot water heater~~ Lined Hot Water Heater shall ensure that an ~~authorized inspector~~ Authorized Inspector performs a ~~certificate~~ Certificate Inspection and ~~external inspection~~ External Inspection of the hot water heating or hot water supply ~~boiler~~ Boiler or ~~lined hot water heater~~ Lined Hot Water Heater at the time the hot water heating, ~~or hot water supply boiler or lined hot water heater~~ is installed installation. An

inspection certificate issued by the Division following an inspection under this subsection shall not state an expiration date.

**R20-5-409. Notification and Preparation for Inspection**

- A. An ~~authorized inspector~~ Authorized Inspector shall perform a ~~certificate inspection~~ Certificate Inspection at a time mutually agreeable to the ~~inspector~~ Authorized Inspector and the ~~owner, user, or operator~~ Owner, Operator, or User.
- B. Before an ~~authorized inspector~~ Authorized Inspector performs an ~~internal inspection~~ Internal Inspection of a ~~boiler~~ Boiler, an ~~owner, user, or operator~~ Owner, Operator, or User shall:
1. Cool the furnace and combustion chambers;
  2. Drain the water from the ~~boiler~~ Boiler;
  3. Remove the manhole and handhole plates, wash-out plugs, ~~and~~ inspection plugs in water column connections, and disassemble all low-water fuel cutoff float chambers or bowls;
  4. Remove insulation or brickwork if necessary to determine the condition of the ~~boiler~~ Boiler, headers, furnace, supports, and other parts;
  5. Remove the pressure gauge for testing;
  6. Prevent any leakage of steam or hot water into the boiler by disconnecting the involved pipe or valve;
  7. Close, tag, and padlock the non-return and steam stop valves before opening the manhole or handhole covers and entering any part of the steam generating unit that is connected to a common header with other ~~boilers~~ Boilers. Open the free blow drain or cock between the non-return and steam stop valves;
  8. Close, tag, and padlock the blowoff valves after draining the ~~boiler~~ Boiler; and
  9. Open all drains and vent lines.

**R20-5-410. Report of Accident**

An ~~owner~~ Owner, Operator, or user User shall notify the Division within 24 hours of an explosion, severe overheating, or personal injury involving a ~~boiler, lined hot water heater or direct fired jacketed steam kettle~~ Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle. A person shall not remove or disturb the involved ~~boiler, lined hot water heater, direct fired jacketed steam kettle~~ Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle or parts of the ~~boiler, lined hot water heater or direct fired jacketed steam kettle~~ Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle before an investigation by an ~~authorized inspector~~ Authorized Inspector, except for the purpose of preventing personal injury or limiting consequential damage.

**R20-5-411. Hydrostatic Tests**

The ~~owner~~ Owner, Operator, or user User of a Boiler shall perform a hydrostatic or pneumatic pressure test in accordance with the code incorporated by reference in R20-5-404(A) and R20-5-406(B).

**R20-5-412. Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices**

- A. An ~~owner, user, or operator~~ Owner, Operator, or User shall ensure that low-water fuel cutoff devices or combined water feeding and fuel cutoff devices do not interfere with an ~~operator's~~ Operator's or ~~inspector's~~ Authorized Inspector's ability to safely clean, repair, or inspect a ~~boiler or lined hot water heater~~ Boiler, Lined Hot Water Heater, or Pressure Vessel.
- B. A low-water fuel cutoff device shall have a pressure rating not less than the set pressure of the ~~safety valve~~ Safety Valve or ~~safety relief valve~~ Safety Relief Valve.
- C. In addition to the requirements of subsections (A) and (B), all low-water fuel cutoffs and flow sensing devices shall be constructed and installed in accordance with applicable ASME Code and standards for ~~boilers~~ Boilers and ~~steam-jacked kettles~~ Direct Fired Jacketed Steam Kettle in R20-5-404(A).

**R20-5-413. Safety and Safety Relief Valves**

- A. A valve shall not be placed between a ~~safety valve~~ Safety Valve, Relief Valve, or a ~~safety relief valve~~ Safety Relief Valve and ~~installed on a boiler or lined hot water heater~~ the Boiler, Lined Hot Water Heater, or Pressure Vessel, or between a ~~safety valve~~ Safety Valve, Relief Valve, or a ~~safety relief valve~~ Safety Relief Valve and the discharge pipe attached to the ~~boiler or lined hot water heater~~ Boiler, Lined Hot Water Heater, or Pressure Vessel.
- B. When a ~~power boiler~~ Power Boiler is supplied with feed-water directly from a water main without the use of a feeding apparatus, ~~safety valves~~ Safety Valves shall not be set at a pressure greater than 94% of the lowest pressure obtained in the water main feeding the ~~boiler~~ Boiler;
- C. ~~Safety valves, safety relief valves and relief valves~~ Valves, Safety Relief Valves, and Relief Valves shall conform to the requirements of the ~~2007~~ 2019 ASME Boiler and Pressure Vessel Code, Section I, IV or VIII, ~~and addenda as of January~~ July 1, 2008, incorporated by reference as applicable. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ and may be obtained from ~~the~~ ASME, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.
- D. The resetting, repairing, and restamping of Safety Valves, Relief Valves, and Safety Relief Valves shall be done by a qualified valve repair organization holding a valid "VR" Certificate of Authorization issued by the National Board of Boiler and Pressure Vessel Inspectors. ASME valve manufacturers holding a valid "V," "HV," and "UV" Certificate(s) of Authorization may also do this work provided they also have a valid "VR" Certificate of Authorization issued by the National Board of Boiler and Pressure Vessel Inspectors.
- E. With jurisdictional approval, Owner, Operators, and Users of Boilers, Lined Hot Water Heaters, and Pressure Vessels may authorize external adjustments to bring installed Safety Valves, Relief Valves, and Safety Relief Valves back to the stamped set pressure when performed by the Owner's, Operator's, or User's trained, qualified, regular, and full-time employees. Refer to Supplement 7.10 of the National Board Inspection Code for guidelines regarding training, documentation, and the implementation of a quality system for the Owner, Operator, or User employees. All such external adjustments shall be resealed with a metal tag showing the identification of the organization making the

adjustments and the date. If any valve repairs are required, they shall be done by a qualified "VR" certificate holder.

**R20-5-415. Boiler Blowdown, Blowoff Equipment and Drains**

- A. Except as provided in this Section, an ~~owner or user~~ Owner, Operator, or User of blowdown and blowoff equipment shall comply with the National Board of Boiler and Pressure Vessel Inspectors, A Guide for Blowoff Vessels, NB-27, Revision 1 (1/13), Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991 2012 Edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- B. Blowdown from a ~~boiler~~ Boiler is a hazard to life and property.
- C. Blowdown from a ~~boiler~~ Boiler shall pass through blowdown equipment that reduces pressure and temperature to levels not exceeding 5 p.s.i.g. and 140° F.
- D. The thickness of a blowdown vessel shall be at least 3/16".
- E. All blowdown equipment shall be fitted with openings that allow cleaning and inspection of the equipment.
- F. Blowdown ~~s~~Separators may be used with ~~boilers~~ Boilers instead of ~~boiler~~ Boiler ~~blowdown tanks~~ Blowdown Tanks, provided that ~~blowdown separators~~ Blowdown Separators are operated with a temperature gauge and water cooler to prevent drain water temperature from exceeding 140° F.
- G. In addition to the requirements of subsections (A) through (F), the following requirements apply to blowdown piping, valves and drains for ~~power boilers~~ Power Boilers:  
Each ~~power boiler~~ Power Boiler and ~~high temperature water boiler~~ High Temperature Water Boiler shall be installed and maintained according to ASME Code, Section 1 and B31.1, incorporated by reference in R20-5-404, at the time of installation.
- H. In addition to the requirements of subsections (A) through (F), the following requirements apply to bottom blowdown or drain valves for heating ~~boilers~~ Boilers and Lined hot water heaters ~~Hot Water Heaters~~:
  - 1. A hot water heating ~~boiler~~ Boiler or Lined hot water heater ~~Hot Water Heater~~ shall have a bottom blowdown or drain pipe connection fitted with a valve or cock connected with the lowest available water space with the minimum size of blowdown piping and valves as required by ASME Code, Section IV, incorporated by reference, in R20-5-404(A).
  - 2. Discharge outlets of blowdown pipes, ~~safety valves~~ Safety Valves, Relief Valves, or Safety Relief Valves, and other piping shall be located and structurally supported to prevent injury to individuals.

**R20-5-416. Maximum Allowable Working Pressure**

- A. The ASME Code under which a ~~boiler~~ Boiler, Lined Hot Water Heater, or Pressure Vessel was constructed and stamped shall determine the ~~maximum allowable working pressure~~ MAWP for the ASME-stamped boiler.

- B. If components in the ~~boiler~~ Boiler, or hot water system such as valves, pumps, expansion tanks, storage tanks or piping have a lesser working pressure rating than the ~~boiler~~ Boiler or ~~Lined hot water heater~~ Hot Water Heater, the pressure setting for the ~~safety~~ Safety Valve or ~~safety relief valve~~ Relief Valve, or Safety Relief Valve on the ~~boiler~~ Boiler or ~~Lined hot water heater~~ Hot Water Heater shall be based upon the component with the lowest ~~maximum allowable working pressure~~ MAWP rating.

**R20-5-417. Maintenance and Operation of Boilers, Lined Hot Water Heaters and Direct Fired Jacketed Steam Kettles**

- A. An ~~owner~~ Owner, Operator, or user User of a ~~boiler, lined hot water heater or direct fired jacketed steam kettle~~ Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle constructed under the ASME Code, Sections I, IV or VIII Division 1, incorporated by reference in R20-5-404(A) shall comply with the manufacturer's maintenance and operation instructions for the ~~boiler, lined hot water heater or direct fired jacketed steam kettle~~.
- B. In addition to the requirements of subsection (A), an ~~owner~~ Owner, Operator, or user User of a ~~boiler~~ Boiler constructed under the ASME Code, Sections I, or IV shall comply with the following preventive maintenance schedule if the boiler contains the component or system listed.
1. On a daily basis, the ~~owner or user~~ Owner, Operator, or User shall:
    - a. Test the low-water fuel cutoff and alarm, and
    - b. Check the burner flame for proper combustion.
  2. On a weekly basis, the ~~owner or user~~ Owner, Operator, or User shall:
    - a. Check for proper ignition, and
    - b. Check the flame failure detection system.
  3. On a monthly basis, the ~~owner or user~~ Owner, Operator, or User shall:
    - a. Test all fan and air pressure interlocks,
    - b. Check the main burner safety shutoff valve,
    - c. Check the low fire start switch,
    - d. Test fuel pressure and temperature interlocks of oil-fired units, and
    - e. Test the high and low fuel pressure switch of gas-fired units.
  4. Every six months, the ~~owner or user~~ Owner, Operator, or User shall:
    - a. Inspect burner components;
    - b. Check flame failure system components, such as vacuum tubes, amplifier and relays;
    - c. Check wiring of all interlocks and shutoff valves; and
    - ~~d. Recalibrate all indicating and recording gauges; and~~
    - d. Check steam and blowdown piping and valves.
  5. Annually, the ~~owner~~ Owner, Operator, or user User shall:
    - a. Replace vacuum tubes, scanners, or flame rods in the flame failure system according to the manufacturer's instructions;
    - b. Check all coils and diaphragms; and
    - c. Test operating parts of all safety shutoff and control valves.
    - d. Unless there is other information to assess their accuracy or reliability, all pressure gages shall be removed, tested, and their readings compared to the readings of a calibrated standard test gage or a dead weight tester.

- C. An ~~owner~~ Owner, Operator, or user User of a ~~power boiler~~ Power Boiler or ~~high temperature boiler~~ High Temperature Water Boiler shall designate an individual who meets the requirements of subsection (D) to operate the ~~boiler~~ Boiler. An ~~owner~~ Owner, Operator, or user User may operate the ~~boiler~~ Boiler if the ~~owner~~ Owner, Operator, or user User meets the requirements of subsection (D).
- D. An ~~operator~~ Operator or User of a ~~power boiler or high temperature water boiler~~ Power Boiler or High Temperature Water Boiler shall meet the following minimum requirements:
1. Knowledge of and an ability to explain the function and operation of all safety controls of the ~~boiler~~ Boiler,
  2. Ability to start the ~~boiler~~ Boiler in a safe manner,
  3. Knowledge of all safe methods of feeding water to the ~~boiler~~ Boiler,
  4. Knowledge of and the ability to blow down the ~~boiler~~ Boiler in a safe manner,
  5. Knowledge of safety procedures to follow if water exceeds or drops below permissible safety levels, and
  6. Knowledge of and the ability to safely shut down the ~~boiler~~ Boiler.

**R20-5-418. Non-standard Boilers**

An ~~owner or user~~ Owner, Operator, or User shall remove from service a ~~boiler, hot water heater or pressure vessel~~ Boiler, Lined Hot Water Heater, or Pressure Vessel that does not bear an ASME stamp unless ~~the boiler owner or user request~~ a variance is requested under R20-5-429.

**R20-5-419. Request to Reinstall Boiler or Lined Hot Water Heater**

- A. The Division shall grant or deny approval to reinstall a ~~boiler or lined hot water heater~~ Boiler or Lined Hot Water Heater within three business days after an ~~owner~~ Owner, Operator, or user User requests approval ~~to reinstall the boiler or lined hot water heater~~. The order of the Division granting or denying approval ~~to reinstall a boiler~~ shall be in writing.
- B. The Division shall grant approval ~~to reinstall a boiler or lined hot water heater~~ if the ~~boiler or lined hot water heater~~ Boiler or Lined Hot Water Heater complies with A.R.S. § 23-471 et seq. ~~the Act~~ and this Article. The Division shall deny approval ~~to reinstall a boiler or lined hot water heater~~ if the ~~boiler or lined hot water heater~~ Boiler or Lined Hot Water Heater does not comply with A.R.S. § 23-471 et seq. ~~the Act~~ and this Article.
- C. An order of the Division denying approval ~~to reinstall a boiler~~ shall be final unless an ~~owner~~ Owner, Operator, or user User requests a hearing under A.R.S. § 23-479 within 15 days after the Division ~~Serves~~ mails the order. The ~~owner~~ Owner, Operator, or user User requesting a hearing shall have the burden to prove that a ~~boiler~~ Boiler or Lined Hot Water Heater meets the requirements of A.R.S. § 23-471 et seq. ~~the Act~~ and this Article.

**R20-5-420. Special Inspector Certificate under A.R.S. § 23-485**

A. ~~Review Time frames.~~ The Division shall administratively review an Applicant's application for a Special Inspector Certificate under A.R.S. § 23-485 within seven days of receipt of the application to determine if the application is complete. If the application is incomplete, the Division shall notify the Applicant in writing of the missing documentation or information necessary to comply with this Article.

1. Administrative Completeness Review:

- a. ~~The Division shall determine whether an application to take a written examination or request for a special inspector certificate under A.R.S. § 23-485 is complete within three days of receipt of the application or request. The Division shall inform the applicant whether the application or request is complete or incomplete by written notice. If the application or request is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information.~~
  - b. ~~The Division shall deem an application or request withdrawn if an applicant fails to file a complete application or request within 10 days of being notified by the Division that the application or request is incomplete unless the applicant obtains an extension to provide the missing information. An applicant may obtain an extension to submit the missing information by filing a written request with the Division no later than 10 days after the Division mails notice that the application or request is incomplete. The written request for an extension shall state the reasons the applicant is unable to meet the 10-day deadline. If an extension will enable the applicant to assemble and submit the missing information, the Division shall grant an extension of not more than 10 days and provide written notice of the extension to the applicant.~~
2. ~~Substantive review:~~
- a. ~~Application to take written examination under A.R.S. § 23-485(A). Within three days after the Division deems an application complete under subsection (B), the Division shall determine whether the applicant is eligible to take the National Board Examination.~~
  - b. ~~Request for special inspector certificate under A.R.S. § 23-485. Within three days after the Division deems a request complete under subsection (C), the Division shall determine whether the applicant meets the criteria of A.R.S. § 23-485 and subsection (C).~~
3. ~~Overall review. The overall review period shall be six days, unless extended under A.R.S. § 41-1072 et seq.~~
- B.** Application to take Written Examination under A.R.S. § 23485(A). The Division shall deem an application withdrawn if the Applicant fails to file a complete application within ten days of being notified by the Division that the application is incomplete pursuant to subsection A, unless the Applicant obtains an extension to provide the missing information. An Applicant may obtain an extension to submit the missing information by filing a written request with the Division no later than ten days after the Division Serves notice that the application is incomplete, stating the reasons why the Applicant is unable to meet the ten-day deadline.
- 1. ~~An individual requesting to take the written examination under A.R.S. § 23-485(A) shall complete an application to take the National Board Examination and submit the application to the Division at least 45 days before the date of the examination.~~
  - 2. ~~The application to take the National Board Examination shall be filed with the Division. An application is considered filed when it is received at the office of the Division and stamped by the Division with the date of filing.~~

3. ~~An application to take the National Board Examination shall be on a legible form, paper or electronic, issued to the Division, with the following information: a. Full legal name, b. e. d. e. f. State or country of residency, Mailing address, Telephone number, E-mail address, and Employer's name and address.~~
- C. ~~Application for Special Inspector Certificate under A.R.S. § 23-485.~~ An application for a special inspector certificate Special Inspector Certificate under A.R.S. § 23-485 is deemed complete under subsection (A)(1) when the following is filed with the Division:
1. ~~The applicant provides written~~ Written documentation demonstrating that the applicant Applicant holds a current commission issued by the National Board of Boiler and Pressure Vessel Inspectors certificate of competency as an inspector of boilers or lined hot water heaters for a state that has a standard of examination equal to that of Arizona or the applicant is a National Board Commissioned Inspector, and
  2. ~~The applicant provides proof~~ Proof of employment as a full-time full-time inspector for a company conducting business in Arizona with a certificate of accreditation as outlined in A.R.S. § 23-485 and whose duties as an inspector include making inspections of boilers or lined hot water heaters Boilers or Lined Hot Water Heaters to be used or insured by the such company and not for resale.
- D. If an ~~applicant~~ Applicant meets the criteria of A.R.S. § 23-485 and subsection (C) of this Section, the Division shall issue a ~~certificate~~ Special Inspector Certificate to the ~~applicant~~ Applicant within 15 calendar days under subsection (C). If an ~~a~~ Applicant fails to meet the criteria of A.R.S. § 23-485 and subsection (C) of this Section, the Division shall issue a written notice denying eligibility to the ~~a~~ Applicant. The Commission shall deem the notice denying eligibility final if an ~~a~~ Applicant does not request a hearing within 15 calendar days after the Division Serves mails the notice.
- E. ~~Written Examination under A.R.S. § 23-485(A).~~
1. ~~The written examination described in A.R.S. § 23-485(A) shall be the National Board Examination of the National Board of Boiler and Pressure Vessel Inspectors.~~
  2. ~~The Division shall administer the National Board Examination the first Wednesday and Thursday of every March, June, September, and December to eligible applicants. Within two days after the Division administers the National Board Examination, the Division shall return the examinations of eligible applicants to the National Board of Boiler and Pressure Vessel Inspectors. Examinations shall be graded by the National Board of Boiler and Pressure Vessel Inspectors.~~
  3. ~~The Division shall provide written notice to an applicant of the applicant's grade for the National Board Examination within three days after the Division receives notice of the grade from the National Board of Boiler and Pressure Vessel Inspectors.~~
  4. ~~The Division shall issue a certificate of competency to an applicant who passes the National Board Examination.~~
- F. ~~Issuance of Special Inspector Certificate. The Division shall issue a special inspector certificate, A.R.S. § 23-485, to an applicant no later than 15 calendar days after the Division determines that an applicant meets the criteria of A.R.S. § 23-485 and subsection (C).~~

**G.E. Hearing on Denial of Eligibility for Special Inspector Certificate.** A Hearing on the denial of eligibility for a Special Inspector Certificate shall be governed by the following provisions:

- and
1. A request for hearing protesting a ~~notice denial~~ of eligibility shall be in writing signed by the ~~a~~Applicant or the ~~a~~Applicant's legal representative. ~~The applicant shall and filed the request for hearing~~ with the Division.
  2. The Commission shall hold a hearing under A.R.S. § 41-1065. The hearing shall be ~~stenographically~~ recorded.
  3. The ~~C~~Chair of the Commission or designee shall preside over hearings held under this Section. The ~~C~~Chair shall apply the provisions of A.R.S. § 41-1062 et seq. to hearings held under this Section and shall have the authority and power of a presiding officer as described in A.R.S § 41-1062.
  4. A decision of the Commission to deny or grant eligibility for a ~~special inspector certificate~~ Special Inspector Certificate shall be based upon the criteria set forth in A.R.S. § 23-485 and this Section and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated. An order of the Commission denying a ~~special inspector certificate~~ Special Inspector Certificate is final unless an applicant files a request for review within 15 days after the Commission Serves mails its order.
  5. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of an ~~a~~Applicant:
    - a. Irregularities in the hearing proceedings or any order or abuse of discretion whereby the ~~a~~Applicant seeking review was deprived of a fair hearing;
    - b. Misconduct by the Division;
    - c. Accident or surprise which could not have been prevented by ordinary prudence;
    - d. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
    - e. Excessive or insufficient sanctions or penalties imposed at hearing;
    - f. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
    - g. Bias or prejudice of the Division; and
    - h. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
  6. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
  7. The Commission's decision upon review is final unless an ~~a~~Applicant seeks judicial review as provided in A.R.S. § 23-483.

**R20-5-429. Variance**

- A. Any ~~owner~~ Owner, Operator, or user User may apply to the Director for a variance from the requirements of this Article, upon demonstrating the construction, installation, and

operation of the ~~boiler~~ Boiler, Lined Hot Water Heater, or pressure vessel ~~Pressure Vessel~~ will maintain the same level of safety as prescribed by this ~~Article~~ Chapter. The Director shall issue a variance if the Director determines that the proponent of the variance has demonstrated the construction, installation, and operation of the ~~boiler or pressure vessel~~ Boiler, Lined Hot Water Heater, or Pressure Vessel will maintain the same level of safety as prescribed by this ~~Article~~ Chapter. The variance issued shall prescribe the construction, installation, operation, maintenance, and repair conditions that the ~~owner~~ Owner, Operator, or user ~~User~~ shall maintain.

- B. A variance may be modified or revoked upon application by an ~~owner~~ Owner, Operator, or User ~~owner, user~~ or the Director, on the Director's own motion at any time after six months from issuance if the owner or user ~~Owner, Operator, or User~~ has not complied with the variance or if the variance does not protect the health and safety of employees or general public.
- C. The application for a variance shall be made on the form issued by the Division and contains the following information:
1. Owner, Operator, or user's ~~User's~~ User name and company name;
  2. Mailing address;
  3. Telephone number;
  4. Fax number;
  5. Contact person;
  6. Contact person's telephone number;
  7. Address or location of proposed variance;
  8. Type of facility to include;
    - a. Variance description,
    - b. Justification for variance,
    - c. Component or system involved,
    - d. Supporting documentation for variance,
    - e. Identify the statute, rule, code or standard to justify the variance; and
  9. Printed name and title of ~~owner~~ Owner, Operator, or user ~~User~~, signature ~~owner~~ Owner, Operator, or user ~~User~~, and date.
- D. If an ~~owner or user~~ Owner, Operator, or User does not agree with the variance issued or revoked by the Director, a request for a hearing under A.R.S. § 23-479 can be made with the Commission.

**R20-5-430. Forced Circulation Lined Hot Water Heaters**

- A. All water tube or coil-type Lined hot water heaters ~~Hot Water Heaters~~ that require forced circulation to prevent overheating and failure of the tubes or coils shall have a safety control, to prevent burner operation at a flow rate inadequate to protect the Lined hot water heater ~~Hot Water Heater~~ unit against overheating, at all allowable firing rates. The safety control shall shut down the burner and prevent restarting until an adequate flow is restored. The flow sensing device shall be labeled and listed by a nationally recognized testing agency as a standard for limit controls complying with UL 353. This safety control shall be independent of any other operating controls.
- B. All water tube or coil-type Lined hot water heaters ~~Hot Water Heaters~~ that require forced circulation to prevent overheating and failure of the tubes or coils, shall have a manually operated remote shutdown switch or circuit breaker and shall be located just outside the Lined hot water heater ~~Hot Water Heater~~'s room door and marked for easy identification.

The shutdown switch shall be installed in a manner to safeguard against tampering. If a ~~Lined hot water heater~~ Hot Water Heater's room door is on the building exterior, the switch shall be located just inside the door. If there is more than one door to the ~~Lined hot water heater~~ Hot Water Heater's room, there shall be a switch located at each door. The remote shutdown switch or circuit breaker shall disconnect all power to the burner controls.

**R20-5-431. Code Cases**

Code cases approved for use by ~~the ASME Code Committee~~ are allowed to be used in the design, fabrication and testing of ~~boilers and pressure vessels~~ Boilers, Lined Hot Water Heaters, and Pressure Vessels provided approval from the ~~boiler chief~~ Chief Boiler Inspector is obtained prior to use.

**R20-5-432. Historical Boilers**

Historical boilers shall require an initial Certificate ~~Inspection~~ inspection by an ~~Authorized Inspector~~ authorized inspector in accordance with ~~The National Board Inspection Code~~, followed by a Certificate ~~Inspection~~ inspection every three years thereafter if stored inside a shelter, or annually if stored outdoors. The initial Certificate ~~Inspection~~ inspection shall include ultrasonic thickness testing of all pressure boundaries. Thinning of the pressure retaining boundary shall be monitored and recorded on the inspection report, ~~in accordance with R20-5-407(D), to the owner and the Division's electronic copy.~~

## **ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

### **TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

#### **CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

#### **ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS**

**1. Identification of the proposed rulemaking:**

The Commission is proposing to amend A.A.C. R20-5-401 (Applicability), A.A.C. R20-5-402 (Definitions), A.A.C. R20-5-404 Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels), A.A.C. R20-5-406 (Repairs and Alterations), A.A.C. R20-5-407 (Inspection of Boilers, Lined Hot Water Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates), A.A.C. R20-5-408 (Frequency of Inspection), A.A.C. R20-5-409 (Notification and Preparation for Inspection), A.A.C. R20-5-410 (Report of Accident), A.A.C. R20-5-411 (Hydrostatic Tests), A.A.C. R20-5-412 (Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices), A.A.C. R20-5-413 (Safety and Safety Relief Valves), A.A.C. R20-5-415 (Boiler Blowdown, Blowoff Equipment and Drains), A.A.C. R20-5-416 (Maximum Allowable Working Pressure), A.A.C. R20-5-417 (Maintenance and Operations of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles), A.A.C. R20-5-418 (Non-standard Boilers), A.A.C. R20-5-419 (Request to Reinstall Boiler or Lined Hot Water Heater, A.A.C. R20-5-420 (Special Inspector Certificates under A.R.S. § 23-485), A.A.C. R20-5-429 (Variance), A.A.C. R20-5-430 (Forced Circulation Hot Water Heaters), A.A.C. R20-5-431 (Code Cases) and A.A.C. R20-5-432 (Historical Boilers). Additionally, the Commission is proposing to repeal A.A.C. R20-5-403 (Boiler Advisory Board).

**0. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:**

Owners, operators, users or inspectors of boilers, hot lined water heaters or pressure vessels will be directly affected by the proposed rulemaking.

**0. A cost benefit analysis of the following:**

a. Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Commission does not anticipate an increase in costs from the new rulemaking. The Commission will not need to hire additional staff to enforce the new rules.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions who own, operate or use boilers, hot lined water heaters or pressure heaters would enjoy the same benefits as outlined below to businesses affected by the proposed amendments.

c. Costs and benefits to businesses directly affected by the rulemaking:

The Industrial Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by eliminating incorrect or confusing language in the current rules to allow for the affected stakeholders to have a clearer understanding of what is required. Additionally, by adopting the most current standards and codes the amendments would facilitate stakeholders in using more modern technology which may provide a cost benefit.

**0. Impact on private and public employment in businesses, agencies and political subdivisions:**

Adoption of the new rules may increase the use of inspectors from qualifying businesses, stimulating economic growth.

**0. Impact on small businesses:**

a. Identification of the small businesses subject to the rulemaking:

Arizona small businesses who are owners, operators, users or inspectors of boilers, hot lined water heaters or pressure vessels will be directly affected by the proposed rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

The proposed rules do not place new obligations, costs, or time constraints on employers, adoption of the final rules is not expected to impose administrative or other costs required for compliance in Arizona.

c. Description of the methods that may be used to reduce the impact on small businesses:

The Commission did not consider methods of reducing the impact on small businesses.

- d. Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

Private persons and consumers are not directly affected by this rulemaking.

**0. Probable effect on state revenues:**

The Commission anticipates state revenues remaining neutral.

**0. Less intrusive or less costly alternative methods considered:**

The Commission did not consider alternative methods.

**0. Data on which the rule is based:**

The Commission did not perform any studies as a basis for the rulemaking.

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- matically Fired Boilers, published by ASME International, incorporated by reference in R20-5-404(A)(4).
16. "Direct fired jacketed steam kettle" means a pressure vessel with inner and outer walls that is subject to steam pressure and stress, is used to boil or heat liquids or to cook food, and falls under the scope of Section VIII, Division 1, Appendix 19 (Electrically Heated or Gas Fired Jacketed Steam Kettles) of the ASME Boiler and Pressure Vessel Code incorporated by reference in R20-5-404(A).
  17. "External inspection" means an examination of a boiler or lined hot water heater performed by an authorized inspector when the boiler or lined hot water heater is in operation.
  18. "Forced circulation hot water heater" means a hot water heater used for potable water, a hot water heater requiring movement of water to prevent overheating and failure of the tubes or coils, and has no definitive waterline.
  19. "Fully attended power boiler" means a power boiler that is operated by an individual who meets the requirements of R20-5-408(C), and whose primary function is the care, maintenance, and operation of the boiler and the equipment associated with the boiler system.
  20. "High temperature water boiler" means a boiler in which water is heated and operates at a pressure in excess of 160 psig (1.1 MPa) and/or temperature in excess of 250° F.
  21. "Historical boilers" means steam boilers of riveted construction, preserved, restored, or maintained for hobby or demonstration use.
  22. "Inspection certificate" means a document issued by the Division for the operation of a boiler, lined hot water heater or direct fired jacketed steam kettles when a certificate inspection has been successfully completed.
  23. "Internal inspection" means a complete examination of the internal and external surfaces of a boiler or lined hot water heater by an authorized inspector after the boiler or lined hot water heater is shut down.
  24. "Lined hot water heater" means the same as lined hot water storage heater defined in A.R.S. § 23-471(10) as a vessel which is closed except for openings through which water can flow, that includes the apparatus by which heat is generated and on which all controls and safety devices necessary to prevent pressures greater than 160 psig (1100 kPa gage) and water temperature greater than 210° F are provided, in which potable water is heated by the combustion of fuels, electricity, or any other heat source and removed for external use.
  25. "MAWP" means maximum allowable working pressure.
  26. "National Board Commissioned Inspector" means an individual who holds a valid and current National Board Commission issued by the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.
  27. "National Board Registration Number" means a unique number issued to a boiler, hot water heater or pressure vessel by the manufacturer and recorded with the National Board of Boiler and Pressure Vessel Inspectors.
  28. "NFPA" means National Fire Protection Association.
  29. "Non-Standard Boiler" means any boiler, hot water heater or pressure vessel that is not constructed or maintained to the standards incorporated by reference of this Article.
  30. "Owner" or "Operator" means any individual or organization, including this state and all political subdivisions of this state, who have title, control or duty to control, the operation of one or more boilers, lined hot water heaters or pressure vessels.
  31. "Portable boiler" means a boiler permanently affixed to a trailer with wheels, that is totally self-contained while operating, and not attached to any other object either by pipe, hose or wire.
  32. "Relief valve" means an ASME-stamped automatic pressure relieving device designed for liquid service which is actuated by the pressure upstream of the valve and opens further with an increase in pressure above the stamped pressure.
  33. "Repairs" means work necessary to restore a boiler, lined hot water heater or pressure vessel to operating condition that complies with this Article.
  34. "Safety relief valve" means an ASME-stamped automatically pressure-actuated relieving device designed for use either as a safety valve or as a relief valve.
  35. "Safety valve" means an ASME-stamped automatic pressure relieving device designed for steam or vapor service which is actuated by the pressure upstream of the valve and characterized by full opening pop-action.
  36. "Secondhand" means a boiler, lined hot water heater or pressure vessel that has changed both location and ownership since original installation.
  37. "Shelter" means a permanent structure that provides protection from the weather.
  38. "Special Inspector" means any authorized inspector who is issued an Arizona Commission but is not employed by the state of Arizona.
  39. "State Identification Number" means a unique number assigned by the Division to a boiler, hot water heater or pressure vessel installed in Arizona.
  40. "User" means a person or entity that does not have legal title to a boiler, lined hot water heater or pressure vessel, but has control and responsibility for the operation of a boiler, lined hot water heater or pressure vessel.
- Historical Note**
- Former Rules B-2.1 through B-2.6. Former Section R4-13-402 repealed, new Section R4-13-402 adopted effective April 12, 1979 (Supp. 79-2). Amended effective March 31, 1981 (Supp. 81-2). Amended effective May 11, 1981 (Supp. 81-3). Amended effective May 31, 1985 (Supp. 85-3). Section R4-1-402 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-402 recodified from R4-13-402 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).
- R20-5-403. Boiler Advisory Board**
- A. Members of the boiler advisory board appointed by the Commission pursuant to A.R.S. § 23-474(2) shall serve for a period of three years. At the end of each three year term, the Commission may extend a member's term an additional three years or replace any member with an individual representing similar interest within the industry. The board shall be composed of persons in the boiler industry and shall be balanced in representation with respect to industry, owner/operators, labor and the public.
  - B. The board shall hold an annual meeting and such other meetings as may be appropriate and shall conduct business at times and places arranged by the Commission.
- Historical Note**
- Former Rules B-3.1 through B-3.3. Former Section R4-13-403 repealed, new Section R4-13-403 adopted effective April 12, 1978 (Supp. 79-2). Section R4-13-403 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-403 recodified from R4-13-403

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(Supp. 95-1). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-404. Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels****A.** The following apply to this Article:

1. An owner or user of a boiler installed, repaired, replaced, or reinstalled in Arizona, six months after the effective date of this Article shall comply with the 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII Division 1, 2, 3, IX, and B31.1 Power Piping, and addenda as of July 1, 2007, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ASME International at Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.
2. An owner or user of a boiler, lined hot water heater or pressure vessel installed, repaired, replaced, or reinstalled in Arizona, before the effective date of this Article shall comply with subsection (A)(1), or the ASME Boiler and Pressure Vessel Code in effect at the time of the last installation, repair, replacement, or reinstallation of the boiler, lined hot water heater or pressure vessel in Arizona.
3. An owner or user of a gas-fired lined hot water heater installed, operated, repaired, replaced, or reinstalled in Arizona shall comply with the American National Standard for Gas Water Heaters, ANSI Z21.10.3-2004, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Attn: Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.
4. An owner or user of a boiler installed, repaired, replaced or reinstalled in Arizona after the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers, ANSI/ASME CSD-1-2006, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ASME International, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.
5. An owner or user of a boiler installed, repaired, replaced, or reinstalled in Arizona before the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers in effect at the time of the last installation, repair, replacement or reinstallation of a boiler in Arizona. As an alternative, an owner or user of a boiler described in this subsection may comply with subsection (A)(4).
6. A permanent source of outside air shall be provided for each boiler and lined hot water heater room to assure complete combustion of the fuel as required by ANSI Z223.1-2006, NFPA 54, National Fuel Gas Code incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for

review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Attn: Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at <http://www.ansi.org/>.

**B.** The following registration requirements apply to this Article:

1. All boilers and lined hot water heaters, including reinstalled and secondhand boilers, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors except for:
  - a. Non-standard boilers installed up to six months after the effective date of this Section,
  - b. Cast iron boilers, and
  - c. Cast aluminum boilers.
2. All fired and unfired pressure vessels installed or reinstalled on or after July 1, 2009, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors.

**C.** The following installation, maintenance, and repair requirements apply to this Article.

1. An owner or user shall keep a signed copy of the Manufacturer's Data Report for a boiler or lined hot water heater at the location of the boiler or lined hot water heater and make the report available for review upon request from an authorized inspector.
2. A boiler shall have masonry or structural supports of sufficient strength and rigidity to safely support the boiler and its contents without any vibration in the boiler or its connecting piping.
3. There shall be at least 36 in. (915 mm) of clearance on each side of the boiler or lined hot water heater. Alternative clearances according to the manufacturer's recommendations are subject to approval by the Division prior to installation of boiler or lined hot water heater.
4. A boiler with a manhole shall have at least five feet clearance between the boiler manhole and any wall, ceiling, or piping.
5. A newly constructed boiler room in excess of 500 square feet of floor area and containing one or more boilers with a fuel capacity of 1,000,000 BTU per hour or a heating capacity greater than 285 Kw (electric), shall have at least two exits on each level of the boiler or boilers. The owner or user shall ensure each exit is remotely located from other exits.
6. An owner or user shall keep a boiler or lined hot water heater room clean and with no obstructions to the boiler or lined hot water heater.
7. An owner or user shall not store flammable or explosive materials in a boiler or lined hot water heater room.
8. An owner or user shall not store combustibles less than three feet from any part of a boiler or lined hot water heater.
9. If a boiler or lined hot water heater is moved outside Arizona for temporary use or repairs, the owner or user shall not reinstall the boiler or lined hot water heater in Arizona until the owner or user notifies and receives verbal or written approval from the Division under R20-5-419 to reinstall the boiler or lined hot water heater. If the Division grants approval to reinstall the boiler or lined hot water heater, the owner or user shall not operate the reinstalled boiler or lined hot water heater until the owner or user receives an inspection certificate from the Division under this Article.
10. Before a new power boiler or a used or secondhand boiler or pressure vessel is installed, an inspection shall be made by an authorized inspector of this state, or by a National Board Commission Inspector. This inspection is to assess

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the integrity of the vessel and evaluate the original design specification. Prior to installation, an application shall be filed by the owner or user of the boiler or pressure vessel with the Division for approval. This application shall contain the following information:

- a. Name of the owner or user;
  - b. Mailing address of owner or user;
  - c. Business telephone number of owner or user;
  - d. Installation name and address;
  - e. Installation date;
  - f. Start up date;
  - g. Name and address of boiler/pressure vessel insurance company;
  - h. Arizona serial number of the boiler/pressure vessel being replaced, if applicable;
  - i. Description of the new, used or secondhand power boiler/ pressure vessel as to include:
    - i. Manufacture's name,
    - ii. Date manufactured,
    - iii. Maximum allowable pressure or temperature of boiler/pressure vessel, and
    - iv. National Board registration number;
  - j. Name, address, business phone number, cell phone number, fax number and state contractor's license number of company or individual that will be installing the object;
  - k. Name, title and phone number of the contact person on the site of installation; and
  - l. Signature, title and date of the person submitting the application.
11. Before the owner or user installing a used boiler or pressure vessel, the boiler or pressure vessel shall pass a hydrostatic test that is witnessed by an authorized inspector, authorized representative or by any National Board Commissioned inspector in accordance with R20-5-411.
12. An owner or user of a portable boiler shall notify an authorized inspector before installing the portable boiler and shall not operate the portable boiler until the owner or user receives an inspection certificate from the Division.

**Historical Note**

Former Rules B-4.1 through B-4.3. Former Section R4-13-404 repealed, new Section R4-13-404 adopted effective April 12, 1979 (Supp. 79-2). Amended subsection (P) by adding paragraph (7) and amended subsection (Q) effective October 3, 1980 (Supp. 80-5). Section R4-13-404 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-404 recodified from R4-13-404 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-405. Repealed****Historical Note**

Former Section R4-13-405 repealed effective April 12, 1979 (Supp. 79-2). New Section R4-13-405 adopted effective June 13, 1980 (Supp. 80-3). Section R4-13-405 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-405 recodified from R4-13-405 (Supp. 95-1). Repealed by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-406. Repairs and Alterations**

- A.** If repairs or alterations may affect the working pressure or safety of a boiler, an owner, user, or operator shall consult with an authorized inspector before having the repairs or alterations made. The authorized inspector shall provide the owner, user, or operator information regarding the best method to repair or

alter the boiler. The owner, user, or operator shall ensure that an authorized inspector inspects and approves the repairs and alterations after the repairs or alterations are made.

- B.** Repairs and alterations to boilers shall conform to the applicable provisions of the National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.national-board.org/>.
- C.** An owner or user shall not permit an individual to remove or repair a safety appliance of a boiler or lined hot water heater in operation. An owner or user shall not permit a person to remove or repair a safety appliance of a boiler or lined hot water heater not in operation except as provided under the ASME Code. If an owner or user permits a person to remove a safety appliance from a boiler or lined hot water heater as provided under the ASME Code, then the owner or user shall ensure that the safety appliance is reinstalled in proper working order before the boiler or lined hot water heater is placed back into operation.
- D.** No person shall alter in any manner a safety valve, relief valve, or safety relief valve, except by an organization qualified in accordance with The National Board Inspection Code, ANSI/NB-23 2007 Edition and 2007 addenda incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.national-board.org/>.
- E.** Repairs of fittings or appliances shall comply with the requirements of the National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- F.** Beginning six months after the effective date of this Section replacement of fittings or appliances shall comply with the requirements of the 2007 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VIII, Division 1, 2, 3, IX and B31.1 Power Piping, and addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007. A copy of the incorporated material may also be obtained from ASME International, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org>.

**Historical Note**

Former Section R4-13-406 repealed effective April 12, 1979 (Supp. 79-2). New Section R4-13-406 adopted effective June 13, 1980 (Supp. 80-3). Section R4-13-406 repealed, new Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-406 recodified from R4-13-406 (Supp. 95-1). Amended effective October 9, 1998 (Supp.

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98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-407. Inspection of Boilers, Lined Hot Water Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates**

- A.** An authorized inspector shall comply with the guidelines set forth in The National Board Inspection Code, ANSI/NB-23-2007 Edition and 2007 addenda, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- B.** If an owner, user, or operator fails to comply with the requirements for an inspection or pressure test under this Article, the Division shall withhold the inspection certificate until the owner, user, or operator complies with the requirements.
- C.** An authorized inspector shall not engage in the sale of any object or device relating to boilers, lined hot water heaters, direct fired jacketed steam kettles or equipment associated with boilers, or lined hot water heaters or direct fired jacketed steam kettles.
- D.** Under A.R.S. § 23-485(D), the Special Inspector shall file the inspection reports by entering data into the Division's Web-based inspection entry form, by submitting a paper inspection report issued by the Division or by electronic transfer of data between the insurance company's database and the Division's database. The inspection report shall contain the following:
1. Whether it is a Certificate or non-Certificate inspection;
  2. Whether it is an internal or external inspection;
  3. Name of location, address and phone number of the object;
  4. Name, address and phone number of owner or responsible party;
  5. Contact person's name and phone number at the inspection location;
  6. State Identification Number;
  7. Certificate due date;
  8. Certificate duration;
  9. Whether the object is active, inactive or scrapped;
  10. MAWP permitted or allowed;
  11. National Board registration number;
  12. Name of the manufacturer and the year the object was built;
  13. Special location in plant, if applicable;
  14. Boiler type;
  15. Purpose of the boiler;
  16. Specify type of fuel used;
  17. Whether the firing method is automatic, manual or unknown;
  18. Whether the fuel train is in compliance with CSD-1, NFPA 85, Z21.10.3 or other;
  19. Whether the boiler is fully attended as per R20-5-408(C);
  20. Heating Surface/BTU Input/ Kilowatt (Kw) Input, as applicable;
  21. Whether the heating surface type is stamped, computed or unknown;
  22. Minimum safety valve relief capacity required;
  23. Whether the minimum safety valve relief capacity type is BTU/Hr, LBS/Hr or unknown;
  24. Number of temperature/pressure controls, as applicable;
  25. Owner number assigned by the owner to specifically identify object's location;
  26. Inspection date;
  27. Whether the certificate is posted;
  28. Safety Valve Total Capacity;
  29. Safety Valve #1 set pressure;
  30. Safety Valve #2 set pressure;
  31. Safety Valve #3 set pressure;
  32. Whether the object has been hydro tested;
  33. Hydro Test (psi), if applicable;
  34. Whether Pressure/Altitude Gage was tested;
  35. Whether of the condition of the object is okay to issue a certificate;
  36. Inspection comments, condition of boiler;
  37. Violations noted;
  38. Inspector name and Arizona Commission number; and
  39. National Board Commission number.
- E.** The Division shall issue to an owner or user an inspection certificate within 30 calendar days of receipt of an inspection report that documents a boiler, lined hot water heater or direct fired jacketed steam kettle that complies with the Act and this Article. An owner or user of a boiler, lined hot water heater or direct fired jacketed steam kettle shall post the inspection certificate in the establishment where the boiler, lined hot water heater or direct fired jacketed steam kettle is located.
- F.** An owner, user, or operator shall ensure that an authorized inspector tags or stamps a steam boiler with an identification number assigned by the Division immediately after installing, but before operating, a new steam boiler, or when an authorized inspector performs an initial certificate inspection of an existing steam boiler. The identification number shall be at least 5/16" in height and in the following format: AZ-# # # #.
- G.** The Division shall mark with a metal dye stamp a boiler or lined hot water heater identified by the Division as not safe for further service, with the code "XXX AZ8 XXX" which shall designate that the boiler or lined hot water heater is condemned.
- H.** For any conditions not covered by this Article, the applicable provisions of the ASME Code that was in effect in Arizona at the time of the installation of the boiler or lined hot water heater shall apply.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-407 recodified from R4-13-407 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-408. Frequency of Inspection**

- A.** An owner, user, or operator of a power boiler shall ensure that an authorized inspector performs a certificate inspection and external inspection of the power boiler every 12 months. An authorized inspector shall perform the external inspection while the power boiler is in operation to ensure that safety devices of the power boiler are operating properly.
- B.** An authorized inspector shall perform an internal inspection and pressure test on a boiler, lined hot water heater or pressure vessel if the inspector determines from an external inspection of the boiler, lined hot water heater or pressure vessel that continued operation of the boiler, lined hot water heater or pressure vessel is a danger to the public or worker safety.
- C.** The Division shall issue a 12 month inspection certificate to an owner or user to operate a fully attended power boiler if:
1. An owner or user ensures that an authorized inspector performs an external safety inspection and audit of the operational methods and logs of the fully attended power boiler at least every 12 months and performs an internal inspection of the fully attended power boiler at least every 36 months;

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2. Continuous boiler water treatment is under the direct supervision of persons trained and experienced in water treatment for the purpose of controlling and limiting corrosion and deposits.
  3. Records are available for review, that indicate:
    - a. The date, time, and reason the boiler is out of service; and
    - b. Daily analysis of water samples that adequately show the conditions of the water and elements or characteristics that are capable of producing corrosion or other deterioration to the boiler or its parts; and
  4. Controls, safety devices, instrumentation, and other equipment necessary for safe operation are current, in service, calibrated, and meet the requirements of an appropriate safety code for the size boilers, such as NFPA 85, ASME CSD-1 Controls and Safety Devices for Automatically Fired Boilers, National Board Inspection Code ANSI/NB-23, and state requirements.
  5. Inspection reports of an authorized inspector document that the fully attended power boiler complies with A.R.S. § 23-471 et seq. and this Article.
- D.** An owner, user, or operator of a direct-fired jacketed steam kettle shall ensure that an authorized inspector performs a certificate inspection of the direct-fired jacketed steam kettle every 24 months.
- E.** An owner, user, or operator of a heating or process boiler, not exceeding 15 p.s.i. maximum allowable working pressure, steam or vapor, shall ensure that an authorized inspector performs a certificate inspection of the heating or process boiler every 24 months.
- F.** An owner or user of a hot water heating or hot water supply boiler, or lined hot water heater shall ensure that an authorized inspector performs a certificate and external inspection of the hot water heating or hot water supply boiler or lined hot water heater at the time the hot water heating or hot water supply boiler or lined hot water heater is installed. An inspection certificate issued by the Division following an inspection under this subsection shall not state an expiration date.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-408 recodified from R4-13-408 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-409. Notification and Preparation for Inspection**

- A.** An authorized inspector shall perform a certificate inspection at a time mutually agreeable to the inspector and owner, user, or operator.
- B.** Before an authorized inspector performs an internal inspection of a boiler, an owner, user, or operator shall:
1. Cool the furnace and combustion chambers;
  2. Drain the water from the boiler;
  3. Remove the manhole and handhole plates, wash-out plugs, and inspection plugs in water column connections;
  4. Remove insulation or brickwork if necessary to determine the condition of the boiler, headers, furnace, supports, and other parts;
  5. Remove the pressure gauge for testing;
  6. Prevent any leakage of steam or hot water into the boiler by disconnecting the involved pipe or valve;
  7. Close, tag, and padlock the non-return and steam stop valves before opening the manhole or handhole covers and entering any part of the steam generating unit that is connected to a common header with other boilers. Open

the free blow drain or cock between the non-return and steam stop valves;

8. Close, tag, and padlock the blowoff valves after draining the boiler: and
9. Open all drains and vent lines.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-409 recodified from R4-13-409 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4).

**R20-5-410. Report of Accident**

An owner or user shall notify the Division within 24 hours of an explosion, severe overheating, or personal injury involving a boiler, lined hot water heater or direct fired jacketed steam kettle. A person shall not remove or disturb the involved boiler, lined hot water heater, direct fired jacketed steam kettle or parts of the boiler, lined hot water heater or direct fired jacketed steam kettle before an investigation by an authorized inspector, except for the purpose of preventing personal injury or limiting consequential damage.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-410 recodified from R4-13-410 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-411. Hydrostatic Tests**

The owner or user shall perform a hydrostatic or pneumatic pressure test in accordance with the code incorporated by reference in R20-5-404(A) and R20-5-406(B).

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-411 recodified from R4-13-411 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-412. Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices**

- A.** An owner, user, or operator shall ensure that low-water fuel cutoff devices or combined water feeding and fuel cutoff devices do not interfere with an operator's or inspector's ability to safely clean, repair, or inspect a boiler or lined hot water heater.
- B.** A low-water fuel cutoff device shall have a pressure rating not less than the set pressure of the safety valve or safety relief valve.
- C.** In addition to the requirements of subsections (A) and (B), all low-water fuel cutoffs and flow sensing devices shall be constructed and installed in accordance with applicable ASME Code and standards for boilers and steam jacketed kettles in R20-5-404(A).

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-412 recodified from R4-13-412 (Supp. 95-1). Amended effective October 9, 1998 (98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-413. Safety and Safety Relief Valves**

- A.** A valve shall not be placed between a safety valve or a safety relief valve and installed on a boiler or lined hot water heater, or between a safety valve or a safety relief valve and the dis-

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charge pipe attached to the boiler or lined hot water heater.

- B. When a power boiler is supplied with feed-water directly from a water main without the use of a feeding apparatus, safety valves shall not be set at a pressure greater than 94% of the lowest pressure obtained in the water main feeding the boiler;
- C. Safety valves, safety relief valves and relief valves shall conform to the requirements of the 2007 ASME Boiler and Pressure Vessel Code, Section I, IV or VIII, and addenda as of January 1, 2008, incorporated by reference as applicable. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ and may be obtained from the ASME, Three Park Avenue, New York, NY 10016-5990 or at <http://www.asme.org/>.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-413 recodified from R4-13-413 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-414. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-414 recodified from R4-13-414 (Supp. 95-1).

Repealed by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-415. Boiler Blowdown, Blowoff Equipment and Drains**

- A. Except as provided in this Section, an owner or user of blowdown and blowoff equipment shall comply with the National Board Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991 Edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at <http://www.nationalboard.org/>.
- B. Blowdown from a boiler is a hazard to life and property.
- C. Blowdown from a boiler shall pass through blowdown equipment that reduces pressure and temperature to levels not exceeding 5 p.s.i.g. and 140° F.
- D. The thickness of a blowdown vessel shall be at least 3/16".
- E. All blowdown equipment shall be fitted with openings that allow cleaning and inspection of the equipment.
- F. Blowdown separators may be used with boilers instead of boiler blowdown tanks, provided that blowdown separators are operated with a temperature gauge and water cooler to prevent drain water temperature from exceeding 140° F.
- G. In addition to the requirements of subsections (A) through (F), the following requirements apply to blowdown piping, valves and drains for power boilers: Each power boiler and high temperature water boiler shall be installed and maintained according to ASME Code, Section I and B31.1, incorporated by reference in R20-5-404, at the time of installation.
- H. In addition to the requirements of subsections (A) through (F), the following requirements apply to bottom blowdown or drain valves for heating boilers and hot water heaters:
  1. A hot water heating boiler or hot water heater shall have a bottom blowdown or drain pipe connection fitted with a

valve or cock connected with the lowest available water space with the minimum size of blowdown piping and valves as required by ASME Code, Section IV, incorporated by reference, in R20-5-404(A).

2. Discharge outlets of blowdown pipes, safety valves and other piping shall be located and structurally supported to prevent injury to individuals.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-415 recodified from R4-13-415 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-416. Maximum Allowable Working Pressure**

- A. The ASME Code under which a boiler was constructed and stamped shall determine the maximum allowable working pressure for the ASME-stamped boiler.
- B. If components in the boiler or hot water system such as valves, pumps, expansion tanks, storage tanks or piping have a lesser working pressure rating than the boiler or hot water heater, the pressure setting for the safety or safety relief valve on the boiler or hot water heater shall be based upon the component with the lowest maximum allowable working pressure rating.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2).

R20-5-416 recodified from R4-13-416 (Supp. 95-1).

Amended effective October 9, 1998 (Supp. 98-4).

Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-417. Maintenance and Operation of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles**

- A. An owner or user of a boiler, hot water heater or direct fired jacketed steam kettle constructed under the ASME Code, Sections I, IV or VIII Division 1, incorporated by reference in R20-5-404(A) shall comply with the manufacturer's maintenance and operation instructions for the boiler, hot water heater or direct fired jacketed steam kettle.
- B. In addition to the requirements of subsection (A), an owner or user of a boiler constructed under the ASME Code, Sections I, IV, shall comply with the following preventive maintenance schedule if the boiler contains the component or system listed.
  1. On a daily basis, the owner or user shall:
    - a. Test the low-water fuel cutoff and alarm, and
    - b. Check the burner flame for proper combustion.
  2. On a weekly basis, the owner or user shall:
    - a. Check for proper ignition, and
    - b. Check the flame failure detection system.
  3. On a monthly basis, the owner or user shall:
    - a. Test all fan and air pressure interlocks,
    - b. Check the main burner safety shutoff valve,
    - c. Check the low fire start switch,
    - d. Test fuel pressure and temperature interlocks of oil-fired units, and
    - e. Test the high and low fuel pressure switch of gas-fired units.
  4. Every six months, the owner or user shall:
    - a. Inspect burner components;
    - b. Check flame failure system components, such as vacuum tubes, amplifier and relays;
    - c. Check wiring of all interlocks and shutoff valves;
    - d. Recalibrate all indicating and recording gauges; and
    - e. Check steam and blowdown piping and valves.
  5. Annually, the owner or user shall:

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- a. Replace vacuum tubes, scanners, or flame rods in the flame failure system according to the manufacturer's instructions;
  - b. Check all coils and diaphragms; and
  - c. Test operating parts of all safety shutoff and control valves.
- C. An owner or user of a power boiler or high temperature boiler shall designate an individual who meets the requirements of subsection (D) to operate the boiler. An owner or user may operate the boiler if the owner or user meets the requirements of subsection (D).
- D. An operator of a power boiler or high temperature water boiler shall meet the following minimum requirements:
- 1. Knowledge of and an ability to explain the function and operation of all safety controls of the boiler,
  - 2. Ability to start the boiler in a safe manner,
  - 3. Knowledge of all safe methods of feeding water to the boiler,
  - 4. Knowledge of and the ability to blow down the boiler in a safe manner,
  - 5. Knowledge of safety procedures to follow if water exceeds or drops below permissible safety levels, and
  - 6. Knowledge of and the ability to safely shut down the boiler.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-417 recodified from R4-13-417 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-418. Non-standard Boilers**

An owner or user shall remove from service a boiler, hot water heater or pressure vessel that does not bear an ASME stamp unless the boiler owner or user request a variance under R20-5-429.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). New Section adopted effective April 9, 1992 (Supp. 92-2). R20-5-418 recodified from R4-13-418 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-419. Request to Reinstall Boiler or Lined Hot Water Heater**

- A. The Division shall grant or deny approval to reinstall a boiler or lined hot water heater within three business days after an owner or user requests approval to reinstall the boiler or lined hot water heater. The order of the Division granting or denying approval to reinstall a boiler shall be in writing.
- B. The Division shall grant approval to reinstall a boiler or lined hot water heater if the boiler or lined hot water heater complies with A.R.S. § 23-471 et seq. and this Article. The Division shall deny approval to reinstall a boiler or lined hot water heater if the boiler or lined hot water heater does not comply with A.R.S. § 23-471 et seq. and this Article.
- C. An order of the Division denying approval to reinstall a boiler shall be final unless an owner or user requests a hearing under A.R.S. § 23-479 within 15 days after the Division mails the order. The owner or user requesting a hearing shall have the burden to prove that a boiler meets the requirements of A.R.S. § 23-471 et seq. and this Article.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-419 recodified from R4-13-419 (Supp. 95-1). New Sec-

tion adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-420. Special Inspector Certificate under A.R.S. § 23-485****A. Review Time-frames.**

- 1. Administrative Completeness Review.
    - a. The Division shall determine whether an application to take a written examination or request for a special inspector certificate under A.R.S. § 23-485 is complete within three days of receipt of the application or request. The Division shall inform the applicant whether the application or request is complete or incomplete by written notice. If the application or request is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information.
    - b. The Division shall deem an application or request withdrawn if an applicant fails to file a complete application or request within 10 days of being notified by the Division that the application or request is incomplete, unless the applicant obtains an extension to provide the missing information. An applicant may obtain an extension to submit the missing information by filing a written request with the Division no later than 10 days after the Division mails notice that the application or request is incomplete. The written request for an extension shall state the reasons the applicant is unable to meet the 10-day deadline. If an extension will enable the applicant to assemble and submit the missing information, the Division shall grant an extension of not more than 10 days and provide written notice of the extension to the applicant.
  - 2. Substantive review.
    - a. Application to take written examination under A.R.S. § 23-485(A). Within three days after the Division deems an application complete under subsection (B), the Division shall determine whether the applicant is eligible to take the National Board Examination.
    - b. Request for special inspector certificate under A.R.S. § 23-485. Within three days after the Division deems a request complete under subsection (C), the Division shall determine whether the applicant meets the criteria of A.R.S. § 23-485 and subsection (C).
  - 3. Overall review. The overall review period shall be six days, unless extended under A.R.S. § 41-1072 et seq.
- B. Application to take Written Examination under A.R.S. § 23-485(A).**
- 1. An individual requesting to take the written examination under A.R.S. § 23-485(A) shall complete an application to take the National Board Examination and submit the application to the Division at least 45 days before the date of the examination.
  - 2. The application to take the National Board Examination shall be filed with the Division. An application is considered filed when it is received at the office of the Division and stamped by the Division with the date of filing.
  - 3. An application to take the National Board Examination shall be on a legible form, paper or electronic, issued to the Division, with the following information:
    - a. Full legal name,
    - b. State or country of residency,
    - c. Mailing address,

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- d. Telephone number,  
e. E-mail address, and  
f. Employer's name and address.
- C. Application for Special Inspector Certificate under A.R.S. § 23-485. An application for a special inspector certificate under A.R.S. § 23-485 is deemed complete under subsection (A)(1) when the following is filed with the Division:
1. The applicant provides written documentation that the applicant holds a certificate of competency as an inspector of boilers or lined hot water heaters for a state that has a standard of examination equal to that of Arizona or the applicant is a National Board Commissioned Inspector, and
  2. The applicant provides proof of employment as a full time inspector for a company conducting business in Arizona and whose duties as an inspector include making inspections of boilers or lined hot water heaters to be used or insured by the company and not for resale.
- D. If an applicant meets the criteria of A.R.S. § 23-485 and subsection (C), the Division shall issue a certificate to the applicant under subsection (C). If an applicant fails to meet the criteria of A.R.S. § 23-485 and subsection (C), the Division shall issue a written notice denying eligibility to the applicant. The Commission shall deem the notice denying eligibility final if an applicant does not request a hearing within 15 calendar days after the Division mails the notice.
- E. Written Examination under A.R.S. § 23-485(A).
1. The written examination described in A.R.S. § 23-485(A) shall be the National Board Examination of the National Board of Boiler and Pressure Vessel Inspectors.
  2. The Division shall administer the National Board Examination the first Wednesday and Thursday of every March, June, September, and December to eligible applicants. Within two days after the Division administers the National Board Examination, the Division shall return the examinations of eligible applicants to the National Board of Boiler and Pressure Vessel Inspectors. Examinations shall be graded by the National Board of Boiler and Pressure Vessel Inspectors.
  3. The Division shall provide written notice to an applicant of the applicant's grade for the National Board Examination within three days after the Division receives notice of the grade from the National Board of Boiler and Pressure Vessel Inspectors.
  4. The Division shall issue a certificate of competency to an applicant who passes the National Board Examination.
- F. Issuance of Special Inspector Certificate. The Division shall issue a special inspector certificate, A.R.S. § 23-485, to an applicant no later than 15 calendar days after the Division determines that an applicant meets the criteria of A.R.S. § 23-485 and subsection (C).
- G. Hearing on Denial of Eligibility for Special Inspector Certificate.
1. A request for hearing protesting a notice of eligibility shall be in writing and signed by the applicant or the applicant's legal representative. The applicant shall file the request for hearing with the Division.
  2. The Commission shall hold a hearing under A.R.S. § 41-1065. The hearing shall be stenographically recorded.
  3. The Chair of the Commission or designee shall preside over hearings held under this Section. The Chair shall apply the provisions of A.R.S. § 41-1062 et seq. to hearings held under this Section and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
  4. A decision of the Commission to deny or grant eligibility for a special inspector certificate shall be based upon the criteria set forth in A.R.S. § 23-485 and this Section and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated. An order of the Commission denying a special inspector certificate is final unless an applicant files a request for review within 15 days after the Commission mails its order.
5. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of an applicant:
    - a. Irregularities in the hearing proceedings or any order or abuse of discretion whereby the applicant seeking review was deprived of a fair hearing;
    - b. Misconduct by the Division;
    - c. Accident or surprise which could not have been prevented by ordinary prudence;
    - d. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
    - e. Excessive or insufficient sanctions or penalties imposed at hearing;
    - f. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
    - g. Bias or prejudice of the Division; and
    - h. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
  6. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
  7. The Commission's decision upon review is final unless an applicant seeks judicial review as provided in A.R.S. § 23-483.

**Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-420 recodified from R4-13-420 (Supp. 95-1). New Section adopted effective October 9, 1998 (Supp. 98-4). Amended by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-421. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-421 recodified from R4-13-421 (Supp. 95-1).

**R20-5-422. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-422 recodified from R4-13-422 (Supp. 95-1).

**R20-5-423. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-423 recodified from R4-13-423 (Supp. 95-1).

**R20-5-424. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-424 recodified from R4-13-424 (Supp. 95-1).

**R20-5-425. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-425 recodified from R4-13-425 (Supp. 95-1).

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**R20-5-426. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-426 recodified from R4-13-426 (Supp. 95-1).

**R20-5-427. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-427 recodified from R4-13-427 (Supp. 95-1).

**R20-5-428. Repealed****Historical Note**

Repealed effective April 12, 1979 (Supp. 79-2). R20-5-428 recodified from R4-13-428 (Supp. 95-1).

**R20-5-429. Variance**

- A.** Any owner or user may apply to the Director for a variance from the requirements of this Article, upon demonstrating the construction, installation, and operation of the boiler or pressure vessel will maintain the same level of safety as prescribed by this Chapter. The Director shall issue a variance if the Director determines that the proponent of the variance has demonstrated the construction, installation, and operation of the boiler or pressure vessel will maintain the same level of safety as prescribed by this Chapter. The variance issued shall prescribe the construction, installation, operation, maintenance, and repair conditions that the owner or user shall maintain.
- B.** A variance may be modified or revoked upon application by an owner, user or the Director, on the Director's own motion at any time after six months from issuance if the owner or user has not complied with the variance or if the variance does not protect the health and safety of employees or general public.
- C.** The application for a variance shall be made on the form issued by the Division and contains the following information:
1. Owner or user's name and company name;
  2. Mailing address;
  3. Telephone number;
  4. Fax number;
  5. Contact person;
  6. Contact person's telephone number;
  7. Address or location of proposed variance;
  8. Type of facility to include;
    - a. Variance description;
    - b. Justification for variance;
    - c. Component or system involved;
    - d. Supporting documentation for variance;
    - e. Identify the statute, rule, code or standard to justify the variance; and
  9. Printed name and title of owner or user, signature of owner or user and date.
- D.** If an owner or user does not agree with the variance issued or revoked by the Director, a request for a hearing under A.R.S. § 23-479 can be made with the Commission.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-430. Forced Circulation Hot Water Heaters**

- A.** All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils shall have a safety control, to prevent burner operation at a flow rate inadequate to protect the hot water heater unit against overheating, at all allowable firing rates. The safety control shall shut down the burner and prevent restarting until an adequate flow is restored.

- B.** All water tube or coil-type hot water heaters that require forced circulation to prevent overheating and failure of the tubes or coils, shall have a manually operated remote shut-down switch or circuit breaker and shall be located just outside the hot water heater room door and marked for easy identification. The shutdown switch shall be installed in a manner to safeguard against tampering. If a hot water heater room door is on the building exterior, the switch shall be located just inside the door. If there is more than one door to the hot water heater room there shall be a switch located at each door. The remote shutdown switch or circuit breaker shall disconnect all power to the burner controls.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-431. Code Cases**

Code cases approved for use by the ASME Code Committee are allowed to be used in the design, fabrication and testing of boilers and pressure vessels provided approval from the Chief Boiler Inspector is obtained prior to use.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**R20-5-432. Historical Boilers**

Historical boilers shall require an initial Certificate inspection by an authorized inspector, followed by a Certificate inspection every three years thereafter if stored inside a shelter, or annually if stored outdoors. The initial Certificate inspection shall include ultrasonic thickness testing of all pressure boundaries. Thinning of the pressure retaining boundary shall be monitored and recorded on the inspection report, in accordance with R20-5-407(D), to the owner and the Division's electronic copy.

**Historical Note**

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3).

**ARTICLE 5. ELEVATOR SAFETY****R20-5-501. Repealed****Historical Note**

Former Rule E-1. Amended effective November 9, 1979 (Supp. 79-6). R20-5-501 recodified from R4-13-501 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

**R20-5-502. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "ASME" means American Society of Mechanical Engineers.
2. "AZFS Key" means Arizona Firefighters Service Key, a universal key used by a firefighter to operate a conveyance during an emergency.
3. "Chief" means the head inspector of the Elevator Safety Section of the Division of Occupational Safety and Health.
4. "Elevator Safety Section" means the Elevator Safety Section of the Division of Occupational Safety and Health of the Industrial Commission of Arizona.
5. "Inspection" means the official determination by an inspector of the condition of all parts of the equipment on which the safe operation of an elevator depends.
6. "Major Alteration" means work performed to any conveyance that is not routine maintenance or repair.
7. "State Serial Number" is a unique number assigned by

## General and Specific Statutes

### **23-108.01. Powers and duties of director**

**A.** The director of the commission, under the supervision of the commission, shall administer the policies, powers and duties of the commission as prescribed by this chapter, and chapters 2 and 6 of this title.

**B.** The director of the commission may deny the salary of a commissioner if the commissioner does not provide documentation that explains what commission duties were completed for the day in which the commissioner is seeking a salary or if the commission duties were not related to preparing for or attending a commission meeting.

### **23-474. Duties of commission**

The commission shall:

1. Administer this article through the division of occupational safety and health.
2. Adopt standards and regulations pursuant to section 23-475 and adopt other rules as are necessary.
3. Exercise other powers as are necessary to carry out the duties and requirements of this article.

### **23-475. Duties of division**

The division shall:

1. Certify special inspectors as provided in section 23-485.
2. Inspect boilers, pressure vessels and lined hot water heaters under this article, except that beginning on July 1, 2017 the division may not inspect boilers, pressure vessels and lined hot water heaters.
3. Establish a schedule to require regular boiler, pressure vessel and lined hot water heater inspections.
4. Recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval.
5. Enforce, under section 23-478, all standards and regulations adopted by the commission.

### **23-476. Safety standards and regulations**

**A.** Safety standards and regulations shall be formulated in the following manner:

1. The division shall either propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigation through the division's employees and through consultation with the boiler advisory board and other persons knowledgeable in the business for which the standards or regulations are being formulated.
2. Proposed standards or regulations, or both, shall be submitted to the commission for its approval.

**B.** Any person who may be adversely affected by a standard or regulation issued pursuant to this article may at any time prior to the sixtieth day after such standard or regulation is promulgated file a complaint challenging the validity of such standard or regulation with the superior court of the county in which the person resides or has his or her principal place of business, for a judicial review of such standard or

regulation. The filing of such a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

C. In case of conflict between standards and regulations, the regulations shall take precedence.

**41-1032. Effective date of rules**

A. A rule filed pursuant to section 41-1031 becomes effective sixty days after a certified original and two copies of the rule and preamble are filed in the office of the secretary of state and the time and date are affixed as provided in section 41-1031, unless the rule making agency includes in the preamble information that demonstrates that the rule needs to be effective immediately on filing in the office of the secretary of state and the time and date are affixed as provided in section 41-1031. A rule may only be effective immediately for any of the following reasons:

1. To preserve the public peace, health or safety.
2. To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction.
3. To comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction.
4. To provide a benefit to the public and a penalty is not associated with a violation of the rule.
5. To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.

B. Notwithstanding subsection A of this section, a rule making agency may specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date.

C. This section does not affect the validity of an existing rule until the new or amended rule that is filed with the secretary of state is effective pursuant to this section.

**Defined Terms**

**R20-5-402. Definitions**

“Act” means A.R.S. Title 23, Chapter 2, Article 11.

“Alteration” means any change in the item described on the original manufacturer’s data report which affects the pressure-containing capability of the Boiler or Pressure Vessel, including but not limited to:

- a. Non physical changes such as an increase in the MAWP either internal or external, or

- b. A reduction in minimum design temperature of a boiler Boiler or pressure vessel Pressure Vessel requiring additional mechanical tests.

“ANSI” means American National Standards Institute, Inc.

“Apartment Complex” means a building with multiple family dwelling units, not used for commercial purposes, including condominiums and townhouses, where Boilers are located in a common area outside of the individual dwelling units, such as a Boiler room.

“Applicant” means an individual requesting permission to act as a Special Inspector under A.R.S. § 23-485.

“ASME” means the American Society of Mechanical Engineers

“Authorized Inspector” means an Authorized Representative under A.R.S. § 23-471(1) or a Special Inspector under A.R.S. § 23-485.

“Blowdown Tank” or “Blowdown Separator” means an ASME-stamped vessel designed to receive discharged steam or hot water from a Boiler blowoff or blowdown piping system.

“BTU” means British thermal units.

“Condemned” means a Boiler or Lined Hot Water Heater that has been inspected and found to be unsafe by an Authorized Inspector and has been stamped or tagged with the code XXX AZ8 XXX.

“CSD-1” means Controls and Safety Devices for Automatically Fired Boilers, published by ASME, incorporated by reference in R20-5-404(A)(4).

“Direct Fired Jacketed Steam Kettle” means a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket’s walls.

“External Inspection” means an examination of a Boiler or Lined Hot Water Heater performed by an Authorized Inspector when the Boiler or Lined Hot Water Heater is in operation.

“Forced Circulation Lined Hot Water Heater” means a Lined Hot Water Heater used for potable water, a Lined Hot Water Heater requiring movement of water to prevent overheating and failure of the tubes or coils, and has no definitive waterline.

“Fully Attended Power Boiler” means a Power Boiler that is operated by an individual who meets the requirements of R20-5- 408(C D), and whose primary function is the care, maintenance, and operation of the Boiler and the equipment associated with the Boiler system.

“Historical Boilers” means steam Boilers preserved, restored, or maintained for hobby or demonstration use.

“HS” means heating surface.

“Inspection Certificate” means a document issued by the Division for the operation of a Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle when a Certificate Inspection has been successfully completed.

“Internal Inspection” means a complete examination of the internal and external surfaces of a Boiler or Lined Hot Water Heater by an Authorized Inspector after the Boiler or Lined Hot Water Heater is shut down.

“Kw” means kilowatt.

“MAWP” means maximum allowable working pressure.

“National Board Commissioned Inspector” means an individual who holds a valid and current National Board Commission issued by the National Board of Boiler and Pressure Vessel Inspectors.

“National Board Registration Number” means a unique number issued to a Boiler, Lined Hot Water Heater, or Pressure Vessel by the manufacturer and recorded with the National Board of Boiler and Pressure Vessel Inspectors.

“NFPA” means National Fire Protection Association.

“Non-Standard Boiler” means any Boiler, Lined Hot Water Heater, or Pressure Vessel that is not constructed or maintained to the standards incorporated by reference of this Article.

“Out of Service” means to either: (1) physically sever or disconnect all sources of energy (water, gas, fuel, electricity, etc.); cap all fuel lines; and disconnect or remove all electrical lines from the Boiler, Lined Hot Water Heater, or Pressure Vessel; or (2) to lock out and tag out the Boiler, Hot Water Heater, or Pressure Vessel per 29 C.F.R. §1910.147, OSHA, General Industry Regulations.

“Portable Boiler” means a Boiler permanently affixed to a trailer with wheels, that is totally self-contained while operating, and not attached to any other object either by pipe, hose, or wire.

“PVHO” means Pressure Vessels for Human Occupancy.

“Relief Valve” means an ASME-stamped automatic pressure relieving device designed for liquid service which is actuated by the pressure upstream of the valve and opens further with an increase in pressure above the stamped pressure.

“Repairs” means work necessary to restore a Boiler, Lined Hot Water Heater, or Pressure Vessel to operating condition that complies with this Article.

“Safety Relief Valve” means an ASME-stamped automatically pressure-actuated relieving device designed for use either as a Safety Valve or as a Relief Valve.

“Secondhand” means a Boiler, Lined Hot Water Heater, or Pressure Vessel that has changed both location and ownership since original installation.

“Serves” means either mailing to the last known address of the receiving party, or transmitting by other means, including electronic transmission, with the written consent of the receiving party.

“Shelter” means a permanent structure that provides protection from the weather.

“Special Inspector” means an inspector who is issued a Special Inspector Certificate under R20-5-420.

“State Identification Number” means a unique number assigned by the Division to a Boiler, Lined Hot Water Heater, or Pressure Vessel installed in Arizona.

“User” means a person or entity that does not have legal title to a Boiler, Lined Hot Water Heater, or Pressure Vessel, but has control and responsibility for the operation of a Boiler, Lined Hot Water Heater, or Pressure Vessel.

**ARIZONA MEDICAL BOARD**

Title 4, Chapter 16, Article 2



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 22, 2022

**SUBJECT:** **ARIZONA MEDICAL BOARD**  
Title 4, Chapter 16, Article 2

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### Summary

This One-Year Review Report (1YRR) from the Arizona Medical Board (Board) relates to rules in Title 4, Chapter 16, Article 2 regarding fees and charges for licensure. These rules were amended under an exemption provided by Laws 2021, Ch. 320, § 24, an emergency measure that was created to expand the availability of telehealth services in order to meet the health care needs of Arizonans. In a rulemaking that went into effect on September 22, 2021, the Board established the fee for out-of-state health care providers to register to provide telehealth services in Arizona. In this rulemaking, the Board also amended the time frame table to include the applicable time frames for registration as an out-of-state health care provider of telehealth services.

The Board submitted this 1YRR pursuant to A.R.S. § 41-1095.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Board cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

Because Laws 2021, Chapter 320, Sec. 24 exempted the Board from complying with A.R.S. Title 41, Chapter 6, the Board did not prepare an economic, small business, and consumer impact statement at the time that the rulemaking was completed. In the 11 months since the rule went into effect, the Board has received 25 applications to register as an out-of-state provider of telehealth services. The Board approved 22 of these applications. One application was not approved because the applicant did not have an active license in another jurisdiction. Two other applications were not approved due to pending receipt of required documentation.

Under R4-16-205(B), the 25 applicants each paid \$500 for registration. As a result, under A.R.S. § 32-1406, the Board deposited \$1,250 into the state's general fund and \$11,250 into the Arizona Medical Board fund.

For all applications received, the Board acted within the time frames specified in Table 1.

Stakeholders include the Board and out-of-state providers of telehealth that would like to provide their services in Arizona.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board indicates that when the Legislature enacted A.R.S. § 36-3606, the legislature determined that the benefits of allowing out-of-state providers to register to provide telehealth services outweighed the costs to the state.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a one-time-only registration fee. For this one-time fee, the Board is required to evaluate the information submitted by an out-of-state provider, supervise compliance for as long as the provider chooses to provide telehealth services to Arizona residents, and receive and evaluate annual updates from the provider. Based on the legislature's cost-benefit determination and the limited authority provided under A.R.S. § 36-3606, the Board concludes that the benefits of the rule outweigh the costs.

The time frames listed in Table 1 run against the Board. These time frames do not regulate out-of-state health care providers.

In the provided supplemental materials, the Board indicates that the fee amount is reasonable compared to the telehealth registration fees established by other states. Additionally, the Board indicates that the fee amount is comparable to the standard licensure fees. Council staff believes that the Board has adequately shown that the rules impose the least burden and costs to those regulated.

**4. Has the agency received any written criticisms of the rules since the rule was adopted?**

No, the Board has not received any written criticisms of the rules since the rule was adopted.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates that the rules are clear, concise, and understandable.

**6. Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Board indicates that the rules are consistent with other rules and statutes.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates that the rules are effective in achieving their objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board states that the rules are enforced as written.

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

No, the Board indicates that the rules are not more stringent than corresponding federal law.

**10. Has the agency completed any additional process required by law?**

Not applicable; no additional process is required.

**11. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No, the rules do not require the issuance of a permit or license. R4-16-205 and Table 1 only specify the required fee.

**12. Conclusion**

Council staff finds that the Board submitted an adequate report pursuant to A.R.S. § 41-1095. Council staff recommends approval of this report.



## Arizona Medical Board

1740 W. Adams, Phoenix, AZ 85007 • website: [www.azmd.gov](http://www.azmd.gov)  
Phone (480) 551-2700 • Toll Free (877) 255-2212 • Fax (480) 551-2707

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Physician Member

Eileen M. Oswald, M.P.H.  
Public Member

### Executive Director

**Patricia E. McSorley**

August 30, 2022

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Medical Board  
One-year-review Report  
R4-16-205 and Table 1**

Dear Ms. Sornsins:

Please find enclosed the referenced one-year-review report. The report is due to be submitted by September 22, 2022.

The Board complies with A.R.S. § 41-1091.

For questions about this report, please contact the Board's executive director, Patricia McSorley, at 480-551-2791 or [patricia.mcsorley@azmd.gov](mailto:patricia.mcsorley@azmd.gov).

Sincerely,

Patricia McSorley  
Executive Director

**ONE-YEAR-REVIEW REPORT**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 16. ARIZONA MEDICAL BOARD**  
**Submitted for November 1, 2022**

INTRODUCTION

The legislature enacted Laws 2021, Chapter 320, as an emergency measure to expand use of telehealth in meeting the health-care needs of Arizonans. The statute (A.R.S. § 36-3606) included a provision allowing a health care provider not licensed in this state to provide telehealth services to individuals in Arizona if the out-of-state health care provider registered with Arizona’s applicable regulatory board and paid a fee specified by the regulatory board. The Board established the fee for an out-of-state health care provider to register to provide telehealth services in Arizona in a rulemaking that went into effect on September 22, 2021. The Board also amended the Board’s time frame table to include the new registration.

As required under A.R.S. § 41-1095(A), this report focuses on the Board’s review of R4-16-205 and Table 1, the two provisions amended under the exemption provided by Laws 2021, Chapter 320, Sec. 24.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1403(A)(8)

1. Specific statute authorizing the rule: A.R.S. §§ 36-3606(A)(3) and 41-1073

2. Objective of the rule:

R4-16-205. Fees and Charges: The objective of this rule is to establish the fees the Board charges for the licenses, certificates, and registrations it issues.

Table 1. Time Frames: The objective of this rule is to provide notice of the amount of time the Board requires to act on an application.

3. Is the rule effective in achieving its objective? Yes

4. Were there written criticisms of the rule, including written analyses questioning whether the rule is based on valid scientific or reliable principles or methods? No
5. Is the rule consistent with other rules and statutes? Yes
6. Is the rule enforced as written? Yes
7. Is the rule clear, concise, and understandable? Yes

8. Estimated economic, small business, and consumer impact of the rule:

Because Laws 2021, Chapter 320, Sec. 24, exempted the Board from complying with A.R.S. Title 41, Chapter 6, the Board did not prepare an economic, small business, and consumer impact statement when the rulemaking was done. In the 11 months since the rule went into effect, the Board has received 25 applications to register as an out-of-state provider of medical services by telehealth. The Board has approved 22 of the registrations. One application was not approved because the applicant did not have an active license in another jurisdiction. The remaining two applications are pending receipt of required documentation

Under R4-16-205(B), the 25 applicants paid \$500 each to register. This means that under A.R.S. § 32-1406, the Board deposited \$1,250 into the state’s general fund and \$11,250 into the Arizona Medical Board fund.

The Board acted within the time frames specified in Table 1 for all the applications.

9. Has the agency received any business competitiveness analyses of the rule? No
10. If applicable, whether the agency completed additional processes required by law: NA
11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

When the legislature enacted A.R.S. § 36-3606, the legislature determined the benefits from allowing registration of out-of-state providers to practice medicine by telehealth outweigh the costs to the state.

The legislature established the paperwork cost when it specified the content of an application that must be submitted and established multiple compliance requirements at A.R.S. § 36-3606(A)(2) through (A)(9), (B), and (C). In establishing these paperwork and compliance requirements, the legislature determined the requirements imposed the least burden and costs on out-of-state providers practicing medicine by telehealth necessary to achieve the underlying regulatory objective.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a one-time-only registration fee. The fee is the only compliance cost established by the Board in the reviewed rules. For this one-time fee, the Board is required to evaluate the application information submitted by the out-of-state provider, supervise compliance for as long as the out-of-state provider may choose to provide telehealth services to residents of Arizona, and receive and evaluate an annual update from the out-of-state provider. The legislature did not authorize the Board to establish a fee for the annual renewal of the registration by an out-of-state provider of telehealth services.

The rules reviewed for this report comply with the minimal authority the legislature provided to the Board. R4-16-205 establishes the fee the Board charges for an out-of-state health care provider to register to provide telehealth services in Arizona. In establishing the fee amount, the Board assumed registered out-of-state providers would maintain their telehealth registrations because the only cost to the out-of-state providers is to submit a renewal registration form. The Board is required to supervise compliance of the out-of-state providers and process the annual registration forms without authority to charge a renewal fee. Because this is the only authority provided to the Board and because the legislature determined there is benefit in allowing out-of-state providers of services by telehealth to register to provide the services in Arizona, the Board concludes the benefits of the rule outweigh the costs.

The time frames listed in Table 1 run against the Board. The time frames do not regulate out-of-state health care providers.

12. Is the rule more stringent than corresponding federal laws? No

13. For a rule that requires issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

Neither R4-16-205 nor Table 1 requires issuance of a permit, license, or other authorization. The requirements for registration are established in statute. The rule simply specifies the fee required.



## Arizona Medical Board

1740 W. Adams, Suite 4000 • Phoenix, AZ 85007  
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704  
Website: [www.azmd.gov](http://www.azmd.gov) • E-Mail: [questions@azmd.gov](mailto:questions@azmd.gov)

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November 21, 2022

Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Ave., Ste. 305  
Phoenix, AZ 85007

Via email: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Dear Members of the Governor's Regulatory Review Council:

This response is being submitted on behalf the Arizona Medical Board (AMB). A similar response was included in the revised One Year Review Report addressing the telehealth registration fee by the Arizona Regulatory Board of Physician Assistants (ARBoPA).

At its meeting on November 1, 2022, the Governor's Regulatory Review Council (GRRC), granted the AMB a postponement to address the questions raised by GRRC members regarding the fees charged by other states who offer a registration process to out-of-physicians seeking to provide telehealth care in a state in which they are not licensed to practice.

In an email dated November 10, 2022, GRRC Staff also presented similar questions related to the One Year Review Report addressing the telehealth registration filed by the ARBoPA.:

GRRC staff is seeking clarification and/or revision to ARBoPA's 1YRR in the following areas:

- **11. Determination that the probable benefits of the rule outweigh the probable costs; least burden and costs analysis**
  - As you likely recall, during the November Council meeting, the Council discussed a similar matter (establishing a fee for out-of-state providers of telehealth services) while considering the Arizona Medical Board's Five-Year Review Report for Title 4, Chapter 16, Article 2. Based on its previous discussion, the Council seems likely to inquire as to (1) what led the Board to establish the \$200 fee amount for out-of-state telehealth providers and (2) how this amount compares to that of other states. Given these likely concerns, GRRC staff would recommend adding additional information to Section 11 of the report to address these areas.
- **12. Is the rule more stringent than corresponding federal laws?**
  - In addition to the existing response ("No"), GRRC staff would recommend explicitly clarifying whether applicable federal law exists.

Currently, there are only 6 other states, like Arizona, that offer an out-of-state physician/physician assistant the ability to practice via telehealth by way of a registration.

States with Telehealth Registration and Fees:

1. Florida No fee
2. West Virginia \$175 for an MD and PA \$100
3. Vermont MD- \$ and PA \$ 175
4. Indiana No fee
5. Minnesota \$75 Annually, plus an application fee of \$100
6. Kansas \$100

A majority of the states, and the standard at this time, is that a physician/physician assistant who wishes to practice telemedicine in the state where a patient is located, must be licensed in and pay the licensing fee associated with practice in that state.

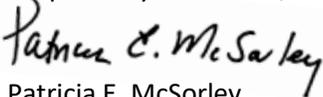
Both the AMB and the ARBoPA applied the “reasonable” standard approach when setting the telehealth registration fee permitted by statute, considering both the cost of the administration and the oversight of the telemedicine registration, including the lack of a renewal fee associated with the annual updating of the registration. The fees were not set to create a barrier or to limit out of state providers from practicing telemedicine within Arizona. The established fees for the telehealth registration are consistent with the fees currently charged for licensure. The MD licensure fee is \$ 500, with a renewal fee of \$500 every two years. The PA licensure fee for two years is \$370 prorated at time of licensure, with a renewal fee of \$370 every two-years.

Currently, the Agency has a licensing department consisting of 12 employees working continuously on the various license application types offered in the State of Arizona: initial license, licensure by endorsement, compact license, universal recognition license, transitional training permit, temporary license, and the telehealth registration. The same staff also processes license applications for physician assistants as well as renewals for the current active licensees (28,352 physicians and 4385 physician assistants).

Taking into consideration the range of fees set by the minority of states that have a telehealth registration, and after reviewing the one-time fees set by the AMB and the ARBoPA for the administration and oversight of the telehealth registration, it would be reasonable to conclude that the probable benefit outweighs to cost to those registering to provide telehealth services in Arizona.

The function of professional licensing and regulation is a state’s right and there are no federal laws giving or providing telehealth registration.

Respectfully submitted,



Patricia E. McSorley  
Executive Director

## TITLE 4. PROFESSIONS AND OCCUPATIONS

### CHAPTER 16. ARIZONA MEDICAL BOARD

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#### **R4-16-205. Fees and Charges**

- A.** As specifically authorized under A.R.S. § 32-1436(A), the Board establishes and shall collect the following fees:
1. Application for a license through endorsement, USMLE Step 3, or Endorsement with SPX Examination, \$500;
  2. Issuance of an initial license, \$500, prorated from date of issuance to date of license renewal;
  3. Renewal of license for two years, \$500;
  4. Application to reactivate an inactive license, \$500;
  5. Locum tenens registration, \$350;
  6. Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program, \$50;
  7. Annual teaching license at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$250;
  8. Five-day teaching permit at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$100;
  9. Initial registration to dispense drugs and devices, \$200;
  10. Annual renewal to dispense drugs and devices, \$150;
  11. Penalty fee for late renewal of an active license, \$350; and
  12. Application for temporary license, \$250.
- B.** Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: \$500.
- C.** The fees specified in subsections (A) and (B) are nonrefundable unless A.R.S. §§ 32-1436(C) or 41-1077 applies.
- D.** As specifically authorized under A.R.S. § 32-1436(B), the Board establishes the following charges for the services listed:
1. Processing fingerprints to conduct a criminal background check, \$50;
  2. Providing a duplicate license, \$50;
  3. Verifying a license, \$10 per request;
  4. Providing a copy of records, documents, letters, minutes, applications, and files, \$1 for the first three pages and 25¢ for each additional page;
  5. Providing a copy of annual allopathic medical directory, \$30; and
  6. Providing an electronic medium containing public information about licensed physicians, \$100.

**Table 1. Time Frames****Time Frames (in calendar days)**

<b>Type of License</b>	<b>Overall Time Frame</b>	<b>Administrative Review Time Frame</b>	<b>Time to Respond to Deficiency Notice</b>	<b>Substantive Review Time Frame</b>	<b>Time to Respond to Request for Additional Information</b>
Initial License by Examination or Endorsement	240	120	365	120	90
Biennial License Renewal	90	45	60	45	60
Locum Tenens or Pro Bono Registration	120	60	90	60	30
Teaching License	40	20	30	20	30
Educational Teaching Permit	20	10	30	10	10
Training Permit	40	20	30	20	30
Short-term Training Permit	40	20	30	20	30
One-year Training Permit	40	20	30	20	30
Annual Registration to Dispense Drugs and Devices	150	45	30	105	30
Registration as an Out-of-state Health Care Provider of Telehealth Services	40	20	30	20	30

32-1403. Powers and duties of the board; compensation; immunity; committee on executive director selection and retention

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.
2. Initiating investigations and determining on its own motion whether a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.
3. Developing and recommending standards governing the profession.
4. Reviewing the credentials and the abilities of applicants whose professional records or physical or mental capabilities may not meet the requirements for licensure or registration as prescribed in article 2 of this chapter in order for the board to make a final determination whether the applicant meets the requirements for licensure pursuant to this chapter.
5. Disciplining and rehabilitating physicians.
6. Engaging in a full exchange of information with the licensing and disciplinary boards and medical associations of other states and jurisdictions of the United States and foreign countries and the Arizona medical association and its components.
7. Directing the preparation and circulation of educational material the board determines is helpful and proper for licensees.
8. Adopting rules regarding the regulation and the qualifications of doctors of medicine.
9. Establishing fees and penalties as provided pursuant to section 32-1436.
10. Delegating to the executive director the board's authority pursuant to section 32-1405 or 32-1451. The board shall adopt substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.
11. Determining whether a prospective or current Arizona licensed physician has the training or experience to demonstrate the physician's ability to treat and manage opiate-dependent patients as a qualifying physician pursuant to 21 United States Code section 823(g)(2)(G)(ii).

B. The board may appoint one of its members to the jurisdiction arbitration panel pursuant to section 32-2907, subsection B.

C. There shall be no monetary liability on the part of and no cause of action shall arise against the executive director or such other permanent or temporary personnel or professional medical investigators for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

D. In conducting its investigations pursuant to subsection A, paragraph 2 of this section, the board may receive and review staff reports relating to complaints and malpractice claims.

E. The board shall establish a program that is reasonable and necessary to educate doctors of medicine regarding the uses and advantages of autologous blood transfusions.

F. The board may make statistical information on doctors of medicine and applicants for licensure under this article available to academic and research organizations.

G. The committee on executive director selection and retention is established consisting of the Arizona medical board and the chairperson and vice chairperson of the Arizona regulatory board of physician assistants. The committee is a public body and is subject to the requirements of title 38, chapter 3, article 3.1. The committee is responsible for appointing the executive director pursuant to section 32-1405. All members of the committee are voting members of the committee. The committee shall elect a chairperson and a vice chairperson when the committee meets but no more frequently than once a year. The chairperson shall call meetings of the committee as necessary, and the vice chairperson may call meetings of the committee that are necessary if the chairperson is not available. The presence of eight members of the committee at a meeting constitutes a quorum. The committee meetings may be held using communications equipment that allows all members who are participating in the meeting to hear each other. If any discussions occur in an executive session of the committee, notwithstanding the requirement that discussions made at an executive session be kept confidential as specified in section 38-431.03, the chairperson and vice chairperson of the Arizona regulatory board of physician assistants may discuss this information with the Arizona regulatory board of physician assistants in executive session. This disclosure of executive session information to the Arizona regulatory board of physician assistants does not constitute a waiver of confidentiality or any privilege, including the attorney-client privilege.

H. The officers of the Arizona medical board and the Arizona regulatory board of physician assistants shall meet twice a year to discuss matters of mutual concern and interest.

I. The board may accept and expend grants, gifts, devises and other contributions from any public or private source, including the federal government. Monies received under this subsection do not revert to the state general fund at the end of a fiscal year.

### 36-3606. Interstate telehealth services; registration; requirements; venue; exceptions

A. A health care provider who is not licensed in this state may provide telehealth services to a person located in this state if the health care provider complies with all of the following:

1. Registers with this state's applicable health care provider regulatory board or agency that licenses comparable health care providers in this state on an application prescribed by the board or agency that contains all of the following:

(a) The health care provider's name.

(b) Proof of the health care provider's professional licensure, including all United States jurisdictions in which the provider is licensed and the license numbers. Verification of licensure in another state shall be made through information obtained from the applicable regulatory board's website.

(c) The health care provider's address, email address and telephone number, including information if the provider needs to be contacted urgently.

(d) Evidence of professional liability insurance coverage.

(e) Designation of a duly appointed statutory agent for service of process in this state.

2. Before prescribing a controlled substance to a patient in this state, registers with the controlled substances prescription monitoring program established pursuant to chapter 28 of this title.

3. Pays the registration fee as determined by the applicable health care provider regulatory board or agency.

4. Holds a current, valid and unrestricted license to practice in another state that is substantially similar to a license issued in this state to a comparable health care provider and is not subject to any past or pending disciplinary proceedings in any jurisdiction. The health care provider shall notify the applicable health care provider regulatory board or agency within five days after any restriction is placed on the health care provider's license or any disciplinary action is initiated or imposed. The health care provider regulatory board or agency registering the health care provider may use the national practitioner databank to verify the information submitted pursuant to this paragraph.

5. Acts in full compliance with all applicable laws and rules of this state, including scope of practice, laws and rules governing prescribing, dispensing and administering prescription drugs and devices, telehealth requirements and the best practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

6. Complies with all existing requirements of this state and any other state in which the health care provider is licensed regarding maintaining professional liability insurance, including coverage for telehealth services provided in this state.

7. Consents to this state's jurisdiction for any disciplinary action or legal proceeding related to the health care provider's acts or omissions under this article.

8. Follows this state's standards of care for that particular licensed health profession.

9. Annually updates the health care provider's registration for accuracy and submits to the applicable health care provider regulatory board or agency a report with the number of patients the provider served in this state and the total number and type of encounters in this state for the preceding year.

B. A health care provider who is registered pursuant to this section may not:

1. Open an office in this state, except as part of a multistate provider group that includes at least one health care provider who is licensed in this state through the applicable health care provider regulatory board or agency.

2. Provide in-person health care services to persons located in this state without first obtaining a license through the applicable health care provider regulatory board or agency.

C. A health care provider who fails to comply with the applicable laws and rules of this state is subject to investigation and both nondisciplinary and disciplinary action by the applicable health care provider regulatory board or agency in this state. For the purposes of disciplinary action by the applicable health care provider regulatory board or agency in this state, all statutory authority regarding investigating,

rehabilitating and educating health care providers may be used. If a health care provider fails to comply with the applicable laws and rules of this state, the applicable health care provider regulatory board or agency in this state may revoke or prohibit the health care provider's privileges in this state, report the action to the national practitioner database and refer the matter to the licensing authority in the state or states where the health care provider possesses a professional license. In any matter or proceeding arising from such a referral, the applicable health care provider regulatory board or agency in this state may share any related disciplinary and investigative information in its possession with another state licensing board.

D. The venue for any civil or criminal action arising from a violation of this section is the patient's county of residence in this state.

E. A health care provider who is not licensed to provide health care services in this state but who holds an active license to provide health care services in another jurisdiction and who provides telehealth services to a person located in this state is not subject to the registration requirements of this section if either of the following applies:

1. The services are provided under one of the following circumstances:

(a) In response to an emergency medication condition.

(b) In consultation with a health care provider who is licensed in this state and who has the ultimate authority over the patient's diagnosis and treatment.

(c) To provide after-care specifically related to a medical procedure that was delivered in person in another state.

(d) To a person who is a resident of another state and the telehealth provider is the primary care provider or behavioral health provider located in the person's state of residence.

2. The health care provider provides fewer than ten telehealth encounters in a calendar year.

#### 41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect

as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

**ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS**

Title 4, Chapter 17, Article 2



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 21, 2022

**SUBJECT:** ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS  
Title 4, Chapter 17, Article 2

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### Summary

This One-Year Review Report (1YRR) from the Arizona Regulatory Board of Physician Assistants (Board) relates to rules in Title 4, Chapter 17, Article 2 regarding fees and charges for licensure. These rules were amended under an exemption provided by Laws 2021, Chapter 320, Section 24, an emergency measure that was created to expand the availability of telehealth services in order to meet the health care needs of Arizonans. In a rulemaking that went into effect on September 22, 2021, the Board established the fee for out-of-state health care providers to register to provide physician assistant services by telehealth in Arizona. In this rulemaking, the Board also amended the time frame table to include the applicable time frames for registration as an out-of-state provider of telehealth services.

The Board submitted this 1YRR pursuant to A.R.S. § 41-1095.

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Board cites both general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

Because Laws 2021, Chapter 320, Sec. 24 exempted the Board from complying with A.R.S. Title 41, Chapter 6, the Board did not prepare an economic, small business, and consumer impact statement at the time that the rulemaking was completed. In the 11 months since the rule went into effect, the Board has not received any applications to register as an out-of-state provider of physician assistant services by telehealth. As a result, the Board has received no registration fees.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board indicates that when the Legislature enacted A.R.S. § 36-3606, the legislature determined that the benefits of allowing out-of-state providers to register to provide telehealth services outweighed the costs to the state.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a one-time-only registration fee of \$200. For this one-time fee, the Board is required to evaluate the information submitted by an out-of-state provider, supervise compliance for as long as the provider chooses to provide telehealth services to Arizona residents, and receive and evaluate annual updates from the provider. Based on the legislature's cost-benefit determination and the limited authority provided under A.R.S. § 36-3606, the Board concludes that the benefits of the rule outweigh the costs.

The time frames listed in Table 1 run against the Board. These time frames do not regulate out-of-state health care providers.

The Board indicates that the fee amount is reasonable compared to the telehealth registration fees established by other states. Additionally, the Board indicates that the fee amount is comparable to the standard licensure fees. Council staff believes that the Board has adequately shown that the rules impose the least burden and costs to those regulated.

**4. Has the agency received any written criticisms of the rules since the rule was adopted?**

No, the Board has not received any written criticisms of the rules since the rule was adopted.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates that the rules are clear, concise, and understandable.

**6. Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Board indicates that the rules are consistent with other rules and statutes.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates that the rules are effective in achieving their objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board states that the rules are enforced as written.

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

No, the Board indicates that there is no corresponding federal law.

**10. Has the agency completed any additional process required by law?**

Not applicable; no additional process is required.

**11. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No; the rules do not require the issuance of a permit or license. R4-17-204 and Table 1 only specify the required fee.

**12. Conclusion**

Council staff finds that the Board has submitted an adequate report pursuant to A.R.S. § 41-1095. Council staff recommends approval of this report.



Douglas A. Ducey  
Governor

**Arizona Regulatory Board of  
Physician Assistants**

1740 W. Adams, Suite 4000 • Phoenix, Arizona 85007  
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704  
Website: [www.azpa.gov](http://www.azpa.gov)

Susan Reina, PA-C  
Chair

August 30, 2022

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Regulatory Board of Physician Assistants  
One-year-review Report  
R4-17-204 and Table 1**

Dear Ms Sornsin:

Please find enclosed the referenced one-year-review report. The report is due to be submitted by September 22, 2022.

The Board complies with A.R.S. § 41-1091.

For questions about this report, please contact the Board's executive director, Patricia McSorley, at 480-551-2791 or [patricia.mcsorley@azmd.gov](mailto:patricia.mcsorley@azmd.gov).

Sincerely,

Patricia McSorley  
Executive Director

**ONE-YEAR-REVIEW REPORT**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS**  
**Submitted for November 1, 2022**

INTRODUCTION

The legislature enacted Laws 2021, Chapter 320, as an emergency measure to expand use of telehealth in meeting the health-care needs of Arizonans. The statute (A.R.S. § 36-3606) included a provision allowing a health care provider not licensed in this state to provide telehealth services to individuals in Arizona if the out-of-state health care provider registered with Arizona’s applicable regulatory board and paid a fee specified by the regulatory board. The Board established the fee for an out-of-state health care provider to register to provide telehealth services in Arizona in a rulemaking that went into effect on September 22, 2021. The Board also amended the Board’s time frame table to include the new registration.

As required under A.R.S. § 41-1095(A), this report focuses on the Board’s review of Table 1 and R4-17-204, the two provisions amended under the exemption provided by Laws 2021, Chapter 320, Sec. 24.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2504(C)

1. Specific statute authorizing the rule: A.R.S. §§ 36-3606(A)(3) and 41-1073

2. Objective of the rule:

Table 1. Time Frames (in days): The objective of this rule is to provide notice of the amount of time the Board requires to act of an application.

R4-17-204. Fees and Charges: The objective of this rule is to establish the fees the Board charges for the licenses and registrations it issues.

3. Is the rule effective in achieving its objective? Yes

4. Were there written criticisms of the rule, including written analyses questioning whether the rule is based on valid scientific or reliable principles or methods? No
5. Is the rule consistent with other rules and statutes? Yes
6. Is the rule enforced as written? Yes
7. Is the rule clear, concise, and understandable? Yes

8. Estimated economic, small business, and consumer impact of the rule:

Because Laws 2021, Chapter 320, Sec. 24, exempted the Board from complying with A.R.S. Title 41, Chapter 6, the Board did not prepare an economic, small business, and consumer impact statement when the rulemaking was done. In the 11 months since the rule went into effect, the Board has received no applications to register as an out-of-state provider of physician assistant services by telehealth. As a result, the Board has received no registration fees and has deposited no monies in the state's general fund or the Arizona Medical Board fund.

The Board acts within the time frames specified in Table 1.

9. Has the agency received any business competitiveness analyses of the rule? No
10. If applicable, whether the agency completed additional processes required by law: NA
11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

When the legislature enacted A.R.S. § 36-3606, the legislature determined the benefits from allowing registration of out-of-state providers of physician assistant services by telehealth outweigh the costs to the state. The legislature established the paperwork cost when it specified the content of an application that must be submitted and established multiple compliance requirements at A.R.S. § 36-3606(A)(2) through (A)(9), (B), and (C). In establishing these paperwork and compliance requirements, the legislature determined the requirements imposed the least burden and costs on out-

of-state providers of physician assistant services by telehealth necessary to achieve the underlying regulatory objective.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a one-time-only registration fee. The fee is the only compliance cost established by the Board in the reviewed rules. For this one-time fee, the Board is required to evaluate the application information submitted by the out-of-state provider, supervise compliance for as long as the out-of-state provider may choose to provide telehealth services to residents of Arizona, and receive and evaluate an annual update from the out-of-state provider. The legislature did not authorize the Board to establish a fee for the annual renewal of the registration by an out-of-state provider of telehealth services.

The rules reviewed for this report comply with the minimal authority the legislature provided to the Board. R4-17-204 establishes the fee the Board charges for an out-of-state health care provider to register to provide telehealth services in Arizona. In establishing the fee amount, the Board assumed registered out-of-state providers would maintain their telehealth registrations because the only cost to the out-of-state providers is to submit a renewal registration form. The Board is required to supervise compliance of the out-of-state providers and process the annual registration forms without authority to charge a renewal fee. Because this is the only authority provided to the Board and because the legislature determined there is benefit in allowing out-of-state providers of services by telehealth to register to provide the services in Arizona, the Board concludes the benefits of the rule outweigh the costs.

The time frames listed in Table 1 run against the Board. The time frames do not regulate out-of-state health care providers.

Currently, there are only 6 other states, like Arizona, that offer an out-of-state physician/physician assistant the ability to practice via telehealth by way of a registration.

#### States with Telehealth Registration and Fees:

1. Florida No fee
2. West Virginia \$175 for an MD and PA \$100
3. Vermont MD- \$ and PA \$ 175
4. Indiana No fee
5. Minnesota \$75 Annually, plus an application fee of \$100
6. Kansas \$100

A majority of the states, and the standard at this time, is that a physician/physician assistant who wishes to practice telemedicine in the state where a patient is located, must be licensed in and pay the licensing fee associated with practice in that state

Both the AMB and the ARBoPA applied the “reasonable” standard approach when setting the telehealth registration fee, considering both the cost of the administration and the oversight of the telemedicine registration, including the lack of a renewal fee associated with the annual updating of the registration. The fees were not set to create a barrier or to limit out of state providers from practicing telemedicine within Arizona. The established fees for the telehealth registration are consistent with the fees currently charged for licensure. The MD licensure fee is \$ 500, with a renewal fee of \$500 every two years. The PA licensure fee for two years is \$370 prorated at time of licensure, with a renewal fee of \$370 every two-years.

Currently, the Agency has a licensing department consisting of 12 employees working continuously on the various license application types offered in the State of Arizona: initial license, licensure by endorsement, Compact license, Universal Recognition License Medical Graduate Training Permit, temporary license, and the telehealth training permit. The same staff also process license applications for physician assistants. The same licensing staff also process the renewals for the 28,352 physicians and the 4385 physician assistants.

Taking into consideration the range of fees set by the minority of states that have a telehealth registration, and after reviewing the one-time fees set by the AMB and the ARBoPA for the administration and oversight of the telehealth registration, it would be reasonable to conclude that the probable benefit outweighs to cost to those registering to provide telehealth services in Arizona.

12. Is the rule more stringent than corresponding federal laws?

The function of professional licensing and regulation is a state’s right and there are no federal laws giving or providing telehealth registration.

13. For a rule that requires issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

Neither R4-17-204 nor Table 1 requires issuance of a permit, license, or other authorization. The requirements for registration are established in statute. The rule simply specifies the fee required.

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 17. ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS**

Table 1. Time Frames (in days)

Type of License	Overall Time Frame	Administrative Review Time Frame	Time to Respond to Deficiency Notice	Substantive Review Time Frame	Time to Respond to Request for Additional Information
Regular License including schedule II or schedule III controlled substances approval R4-17-203	120	30	365	90	90
License Renewal R4-17-206	75	30	60	45	60
Registration as an Out-of-state Health Care Provider of Telehealth Services A.R.S. § 36-3606(A)(3)	40	20	30	20	30

**R4-17-204. Fees and Charges**

- A. As expressly authorized under A.R.S. § 32-2526(A)(1) through (4), the Board shall charge the following fees:
1. License application - \$125.00;
  2. Regular license - \$370.00, prorated for each month remaining in the biennial period;
  3. Regular license renewal - \$370.00 if the renewal application is postmarked no later than the applicant's birthdate; and
  4. Penalty for late renewal - \$100.00.
- B. Under the specific authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: \$200.
- C. The fees specified in subsections (A) and (B) are nonrefundable unless A.R.S. §§ 32-2526(B) or 41-1077 applies.
- D. As expressly authorized under A.R.S. § 32-2526(A)(5) through (9), the Board establishes the following charges for providing the services listed:
1. Duplicate license - \$25.00;
  2. Copies of Board documents - \$1.00 for first three pages, \$.25 for each additional page;
  3. Medical Directory (CD-ROM) - \$30.00;
  4. Data Disk - \$100.00; and

32-2504. Powers and duties; delegation of authority; rules; subcommittees; immunity

A. The board shall:

1. As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.
  2. License and regulate physician assistants pursuant to this chapter.
  3. Order and evaluate physical, psychological, psychiatric and competency testing of licensees and applicants the board determines is necessary to enforce this chapter.
  4. Review the credentials and the abilities of applicants for licensure whose professional records or physical or mental capabilities may not meet the requirements of this chapter.
  5. Initiate investigations and determine on its own motion whether a licensee has engaged in unprofessional conduct or is or may be incompetent or mentally or physically unable to safely perform health care tasks.
  6. Establish fees and penalties pursuant to section 32-2526.
  7. Develop and recommend standards governing the profession.
  8. Engage in the full exchange of information with the licensing and disciplinary boards and professional associations of other states and jurisdictions of the United States and foreign countries and a statewide association for physician assistants.
  9. Direct the preparation and circulation of educational material the board determines is helpful and proper for its licensees.
  10. Discipline and rehabilitate physician assistants pursuant to this chapter.
  11. Certify physician assistants for thirty-day prescription privileges for schedule II, schedule III, schedule IV and schedule V controlled substances that are opioids or benzodiazepine and ninety-day prescription privileges for schedule II, schedule III, schedule IV and schedule V controlled substances that are not opioids or benzodiazepine if the physician assistant either:
    - (a) Within the preceding three years of application, completed forty-five hours in pharmacology or clinical management of drug therapy or at the time of application is certified by a national commission on the certification of physician assistants or its successor.
    - (b) Met any other requirement established by board rule.
- B. The board may delegate to the executive director the board's authority pursuant to this section or section 32-2551. The board shall adopt a substantive policy statement pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.
- C. The board may make and adopt rules necessary or proper for the administration of this chapter.

D. The chairperson may establish subcommittees consisting of board members and define their duties as the chairperson deems necessary to carry out the functions of the board.

E. Board employees, including the executive director, temporary personnel and professional medical investigators, are immune from civil liability for good faith actions they take to enforce this chapter.

F. In performing its duties pursuant to subsection A of this section, the board may receive and review staff reports on complaints, malpractice cases and all investigations.

G. The chairperson and vice chairperson of the Arizona regulatory board of physician assistants are members of the committee on executive director selection and retention established by section 32-1403, subsection G, which is responsible for the appointment of the executive director pursuant to section 32-1405.

### 36-3606. Interstate telehealth services; registration; requirements; venue; exceptions

A. A health care provider who is not licensed in this state may provide telehealth services to a person located in this state if the health care provider complies with all of the following:

1. Registers with this state's applicable health care provider regulatory board or agency that licenses comparable health care providers in this state on an application prescribed by the board or agency that contains all of the following:

(a) The health care provider's name.

(b) Proof of the health care provider's professional licensure, including all United States jurisdictions in which the provider is licensed and the license numbers. Verification of licensure in another state shall be made through information obtained from the applicable regulatory board's website.

(c) The health care provider's address, email address and telephone number, including information if the provider needs to be contacted urgently.

(d) Evidence of professional liability insurance coverage.

(e) Designation of a duly appointed statutory agent for service of process in this state.

2. Before prescribing a controlled substance to a patient in this state, registers with the controlled substances prescription monitoring program established pursuant to chapter 28 of this title.

3. Pays the registration fee as determined by the applicable health care provider regulatory board or agency.

4. Holds a current, valid and unrestricted license to practice in another state that is substantially similar to a license issued in this state to a comparable health care provider and is not subject to any past or pending disciplinary proceedings in any jurisdiction. The health care provider shall notify the applicable health care provider regulatory board or agency within five days after any restriction is placed on the health care provider's license or any disciplinary action is initiated or imposed. The health care provider regulatory

board or agency registering the health care provider may use the national practitioner databank to verify the information submitted pursuant to this paragraph.

5. Acts in full compliance with all applicable laws and rules of this state, including scope of practice, laws and rules governing prescribing, dispensing and administering prescription drugs and devices, telehealth requirements and the best practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

6. Complies with all existing requirements of this state and any other state in which the health care provider is licensed regarding maintaining professional liability insurance, including coverage for telehealth services provided in this state.

7. Consents to this state's jurisdiction for any disciplinary action or legal proceeding related to the health care provider's acts or omissions under this article.

8. Follows this state's standards of care for that particular licensed health profession.

9. Annually updates the health care provider's registration for accuracy and submits to the applicable health care provider regulatory board or agency a report with the number of patients the provider served in this state and the total number and type of encounters in this state for the preceding year.

B. A health care provider who is registered pursuant to this section may not:

1. Open an office in this state, except as part of a multistate provider group that includes at least one health care provider who is licensed in this state through the applicable health care provider regulatory board or agency.

2. Provide in-person health care services to persons located in this state without first obtaining a license through the applicable health care provider regulatory board or agency.

C. A health care provider who fails to comply with the applicable laws and rules of this state is subject to investigation and both nondisciplinary and disciplinary action by the applicable health care provider regulatory board or agency in this state. For the purposes of disciplinary action by the applicable health care provider regulatory board or agency in this state, all statutory authority regarding investigating, rehabilitating and educating health care providers may be used. If a health care provider fails to comply with the applicable laws and rules of this state, the applicable health care provider regulatory board or agency in this state may revoke or prohibit the health care provider's privileges in this state, report the action to the national practitioner database and refer the matter to the licensing authority in the state or states where the health care provider possesses a professional license. In any matter or proceeding arising from such a referral, the applicable health care provider regulatory board or agency in this state may share any related disciplinary and investigative information in its possession with another state licensing board.

D. The venue for any civil or criminal action arising from a violation of this section is the patient's county of residence in this state.

E. A health care provider who is not licensed to provide health care services in this state but who holds an active license to provide health care services in another jurisdiction and who provides telehealth services to a person located in this state is not subject to the registration requirements of this section if either of the following applies:

1. The services are provided under one of the following circumstances:

(a) In response to an emergency medication condition.

(b) In consultation with a health care provider who is licensed in this state and who has the ultimate authority over the patient's diagnosis and treatment.

(c) To provide after-care specifically related to a medical procedure that was delivered in person in another state.

(d) To a person who is a resident of another state and the telehealth provider is the primary care provider or behavioral health provider located in the person's state of residence.

2. The health care provider provides fewer than ten telehealth encounters in a calendar year.

**41-1073. Time frames; exception**

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.

4. The impact of the licensing decision on public health and safety.

5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.

2. Within seven days after receipt of initial application.

3. By a lottery method.

**ARIZONA STATE BOARD OF INVESTMENT**

Title 2 Chapter 13, Article 2 (AZ 529, Arizona's Education Savings Plan)



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

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**MEETING DATE:** Dec 6, 2022

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

**FROM:** Council Staff

**DATE:** October 21, 2022

**SUBJECT: ARIZONA STATE BOARD OF INVESTMENT**  
Title 2 Chapter 13, Article 2 (AZ 529, Arizona's Education Savings Plan)

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### Summary

This One Year Review Report (1YRR) from the Arizona State Board of Investment (Board) relates to Title 2 Chapter 13, Article 2 regarding Arizona's Education Savings Plan, AZ 529. Amendments to these rules were adopted in an exempt rulemaking pursuant to Laws 2020, Chapter 88 which granted the Board a one time exemption from the Administrative Procedures Act (APA) in Title 41, Chapter 6 of the Arizona Revised Statutes. A copy of the Notice of Exempt Rulemaking is included with the final materials for the Council's reference.

This Session Law transferred the Arizona Family College Savings Program from the Arizona Commission for Postsecondary Education to the Office of the Arizona State Treasurer as Program Administrator and the Board as Program Trustee. These rules support the Board's objectives to reflect the new structure and operation of the AZ529 within the Arizona State Treasurer and remove and update any outdated rules language and terminology.

The Board submitted this 1YRR pursuant to ARS § 41-1095.

#### **1. Has the agency analyzed whether the rules are authorized by statute?**

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

No economic impact analysis was submitted as the Board indicates no economic, small business, or consumer impact was implicated.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board states that the rules provide necessary guidance for making contributions, disclosing fees, changing beneficiaries and making qualified withdrawals from AZ529 Plans, but minimize paperwork and compliance costs. The rules received one comment during development, but the Board states that the comment was addressed.

**4. Has the agency received any written criticisms of the rules since the rule was adopted?**

No, the Board has not received any written criticisms of the rules since the rule was adopted.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates the rules are overall clear, concise, and understandable.

**6. Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Board indicates the rules are consistent with other rules and statutes.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates the rules are effective in achieving their objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board indicates the rules are enforced as written.

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

Section 529 of the Internal Revenue Service Code is applicable to the subject of the rule. The rules are not more stringent than this federal law.

**10. Has the agency completed any additional process required by law?**

The Board indicates no additional process was required.

**11. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board indicates that the current rules also do not require the issuance of a license or agency authorization. However, ARS § 15-1872 requires the Board to approve financial institutions to act as depositories and managers of the AZ529 Plan.

**12. Conclusion**

Council staff finds that the Board submitted an adequate report pursuant to ARS § 41-1095. The Board is not proposing any additional action. Council Staff requests placement on the five year review timeline moving forward as any further rulemaking revisions will comply with all regular rulemaking requirements. Council staff also recommends approval of the report.



OFFICE OF THE  
**ARIZONA STATE TREASURER**

**KIMBERLY YEE**  
TREASURER



**October 24, 2022**

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

**Nicole Sornsin, Chair**  
**Governor's Regulatory Review Council**  
**100 North 15th Avenue, Suite 305**  
**Phoenix, AZ 85007**

**RE: State Board of Investment**  
**One-Year Review Report for 2 A.A.C. 13, Article 2**

Dear Ms. Sornsin,

As requested, here is a cover letter for the One-Year Review Report that was originally submitted from the State Board of Investment on September 12, 2022.

The One-Year Review Report is for 2 A.A.C. 13, Article 2 for the Council's review and approval which was due on September 28, 2022.

Additionally, the Board complies with A.R.S. § 41-1091.

For questions about this report, please contact Jeffrey Ong at 602-542-7880 or [jeffreyo@aztreasury.gov](mailto:jeffreyo@aztreasury.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly Yee".

The Honorable Kimberly Yee  
Arizona State Treasurer and Chairwoman, State Board of Investment

**STATE BOARD OF INVESTMENT  
ONE-YEAR REVIEW REPORT  
2 A.A.C. 13, ARTICLE 2  
September 28, 2022**

Pursuant to [A.R.S. § 41-1095](#), the Arizona State Board of Investment (Board) submits a one-year review report for [2 A.A.C. 13, Article 2](#).

[Laws 2020, Chapter 88](#), exempted the Board from the rulemaking requirements of Title 41, Chapter 6, Arizona Revised Statutes, for one-year after the effective date of October 1, 2020, for the purpose of adopting rules relating to the AZ529, Arizona’s Education Savings Plan. The current rules were amended and adopted by the Board and were effective on September 28, 2021.

**Summary of Findings**

Additionally, as required by [A.R.S. § 41-1095](#), the Board is providing a concise analysis of the following:

**1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.**

- [Laws 2020, Chapter 88](#) transferred the Arizona Family College Savings Program (subsequently renamed to AZ529, Arizona’s Education Savings Plan by [Laws 2021, Chapter 188](#)) from the Arizona Commission for Postsecondary Education (Commission) to the Office of the Arizona State Treasurer (ASTO) as Program Administrator and the Board as Program Trustee, effective October 1, 2020. During the transfer, all Program rules previously adopted by the Commission were in full force until superseded by rules adopted by ASTO or the Board, as applicable.
- As filed by the Board in a Notice of Exempt Rulemaking on September 23, 2021 and effective September 28, 2021, the Board amended the rules to: a) update the existing rules to reflect the new Administrator and Trustee structure; b) remove any antiquated, redundant or unnecessary rule language; c) update the rule language accordingly in light of any changes in federal and state law, regulation and guidance since the previous 2003 update; and d) recodify the rules from their previous location in A.A.C. Title 7 (Education) under the Commission to the current location for the Board rules in A.A.C. Title 2 (Administration).
- Accordingly, the current rules support the Board’s objectives to reflect the new structure and operation of the AZ529, Arizona’s Education Savings Plan (AZ529 Plan), within ASTO and remove and update any outdated rules language and terminology. With these amended rules, the ASTO promoted the AZ529 Plan to help families across Arizona save for not only traditional education, but career and technical opportunities. Since the ASTO took over administration of the AZ529 Plan, in October 2020, there have been 20,950 new accounts added in just over 22 months. Assets under management have increased by 14.6% in that same time frame to \$1.86 billion.

**2. Written criticisms of the rule received since the rule was adopted, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.**

- The agency did not receive any written criticisms for the rule since it was adopted.

**3. Authorization of the rule by existing statutes.**

- The rules are authorized by A.R.S. §§ [15-1872\(B\)](#) and [15-1875\(L\)](#).
- Furthermore, as stipulated by [Laws 2020, Chapter 88](#), the Board was exempted from the rulemaking requirements of Title 41, Chapter 6, Arizona Revised Statutes, for one-year after the effective date of October 1, 2020, for the purpose of adopting rules relating to the AZ529 Plan. The current rules were amended and adopted by the Board and were effective on September 28, 2021.

**4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.**

- The rules are consistent with [A.R.S. § 15-1872\(B\)](#) which allows the Board to adopt rules to assist in implementing and administering the AZ529 Plan.
- Additionally, as required by [A.R.S. § 15-1875\(L\)](#), the adopted rules prevent contributions on behalf of a designated beneficiary that are in excess of those necessary to pay qualified higher education expenses and outline oversight procedures for aggregating the total balance of multiple accounts.
- At its monthly meeting, the State Board of Investment reviews the oversight and performance of the AZ529 Plan. This includes addressing any issues that need enforcement if they arise to ensure program providers are in compliance with all the rules.

**5. The clarity, conciseness and understandability of the rule.**

- Since the ASTO took over administration of the AZ529 Plan in October 2020, new accounts have increased by 20,950 in just over 22 months. During that same time, assets under management have increased by 14.6% to \$1.86 billion. These results are attributable to the clarity and understandability of the rules that govern the AZ529 Plan making it easier for any family to open an AZ529 account.

**6. The estimated economic, small business and consumer impact of the rule.**

- No economic, small business or consumer impact is implicated.

**7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.**

- The agency did not receive any analysis from another person that compares the rule's impact on the business competitiveness of this state to other states.

**8. If applicable, that the agency completed any additional process required by law, including the requirement for the agency to publish otherwise exempt rules or provide the public with an opportunity to comment on the rules.**

- There were no other additional processes required by law to be completed.

**9. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

- The current rules were thoroughly reviewed by the Board with comments from one stakeholder, Fidelity Investments, which were subsequently addressed. These rules clearly define the ASTO as Administrator and the Board as Trustee for the AZ529 Plan and provide a balanced approach to oversee and regulate the respective financial institutions that are plan providers to ensure compliance, sound investments and maximum growth for the AZ529 Plan, yet minimizing paperwork and compliance costs.
- Additionally, these rules provide AZ529 Plan participants necessary guidance for making contributions, disclosing fees, changing beneficiaries and making qualified withdrawals, while allowing participants to choose the AZ529 provider that is the best investment approach for them.

**10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

- Section 529 of the Internal Revenue Service Code is applicable to the subject of the rule. The rule is not more stringent than this federal law.

**11. For rules that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.**

- The current rules do not require the issuance of a permit, license or agency authorization. However, A.R.S. § 15-1872 requires the Board to approve financial institutions to act as depositories and managers of the AZ529 Plan.

**B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.**

- At this time, the Board does not wish to propose an expedited rule.

**Certification that the agency is in compliance with A.R.S. § 41-1091**

- The Board certifies that it is in compliance with [A.R.S. § 41-1091](#) regarding substantive policy statements. As required, by [A.R.S. § 41-1013 \(B\)\(7\)](#), the Board filed a notice of exempt rulemaking on September 23, 2021 which was published in the Arizona Administrative Register (Volume 27, Issue 41) on October 8, 2021.

**Proposed Course of Action**

- The Board has reviewed the rules adopted under the rulemaking exemption and determined that at this time there are no rules that should be amended or repealed.

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2021 is cited as Supp. 21-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note

to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State’s website, [www.azsos.gov](http://www.azsos.gov) under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

### EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing Chapters using these paper colors.

### PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*



Administrative Rules Division  
 The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

**TITLE 2. ADMINISTRATION**

**CHAPTER 13. STATE BOARD OF INVESTMENT**

Authority: A.R.S. §§15-1872(B) and 15-1875(L)

**Supp. 21-3**

*Editor's Note: The name of the State Board of Deposit was changed to the State Board of Investment by Laws 1998, Ch. 69, § 6, effective May 7, 1998 (Supp. 06-1).*

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**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R2-13-101 through R2-13-103, adopted effective July 12, 1996 (Supp. 96-3).*

*Former Article 1, consisting of Sections R2-13-01 and R2-13-02, adopted as an emergency action effective April 25, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-2). Emergency expired.*

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*New Article 2, consisting of Sections R2-13-201 through R2-13-208, recodified from R7-3-501 through R7-3-508, at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Article 2 heading amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).*

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**ARTICLE 2. AZ529, ARIZONA'S EDUCATION SAVINGS PLAN**

## CHAPTER 13. STATE BOARD OF INVESTMENT

**ARTICLE 1. GENERAL PROVISIONS****R2-13-101. Definitions**

In this Article, unless otherwise specified, the following terms mean:

1. "General Accounting Office" means the General Accounting Office of the Department of Administration.
2. "General Fund" means the General Fund of the State as defined in A.R.S. § 35-141.
3. "Servicing Bank" means the bank awarded the servicing bank contract pursuant to A.R.S. § 35-315(C).
4. "Servicing Bank Contract" means the contract awarded pursuant to A.R.S. § 35-315.

**Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). R2-13-101(3) reflects corrected A.R.S. citation (Supp. 06-1). R2-13-101(1) revised at request of the Board, Office File No. M11-215, filed June 7, 2011 (Supp. 11-2).

**R2-13-102. Servicing Bank Charges Account**

- A. As authorized by A.R.S. § 35-315(B), General Fund interest earnings shall be deposited monthly into a General Fund account known as the "Servicing Bank Charges Account" to the extent necessary to pay for current servicing charges.
- B. Claims for servicing bank charges shall be paid from the Servicing Bank Charges Account. After each payment the General Accounting Office shall transfer any remaining interest earnings in the Servicing Bank Charges Account into the General Fund.

**Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3). R2-13-102(A) reflects corrected A.R.S. citation (Supp. 06-1). R2-13-102(B) revised at request of the Board, Office File No. M11-215, filed June 7, 2011 (Supp. 11-2).

**R2-13-103. Information Required to be Submitted with Servicing Bank's Monthly Statement**

This Servicing Bank shall deliver to the state treasurer its monthly account analysis statement for services rendered in the preceding month which shall include the number and type of transactions performed, amount and time duration of deposits, and any other information required under the servicing bank contract.

**Historical Note**

Adopted effective July 12, 1996 (Supp. 96-3).

**ARTICLE 2. AZ529, ARIZONA'S EDUCATION SAVINGS PLAN****R2-13-201. Definitions**

- A. "Account year" means the period beginning on October 1 and ending on September 30 of each year.
- B. "A.R.S." means Arizona Revised Statutes.
- C. "Board" means the Arizona State Board of Investment.
- D. "Cash" means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer will be treated as cash. Deposits will also be accepted by credit card.
- E. "Code" means the Internal Revenue Service Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law.
- F. "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account. If a distribution is made directly to the designated beneficiary or to an eligible educational institution for

the benefit of the designated beneficiary, the designated beneficiary is the distributee. In all other circumstances, the account owner is the distributee.

- G. "Eligible educational institution" means an institution of higher education that qualifies under § 529 of the Code as an eligible educational institution.
- H. "Financial institution" means a financial institution as defined in A.R.S. § 15-1871(6).
- I. "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.
- J. "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.
- K. "Treasurer" means the Office of the Arizona State Treasurer.

**Historical Note**

New Section R2-13-201 recodified from Section R7-3-501 at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

**R2-13-202. Cash Contributions; Fees**

- A. Contributions to accounts in all qualified tuition programs shall be made only in cash as defined in R2-13-201.
- B. Application fee. The application fee is \$10. Application fees shall be forwarded to the Treasurer at the end of the month in which the account is opened. A financial institution may waive the application fee but will nevertheless be responsible for tendering to the Treasurer \$10 for each new account opened; said tender to be made at the end of the month in which the account is opened. The Treasurer shall review the application fee every 24 months and recommend to the Board whether the application fee should be adjusted.
- C. Reasonable fees and charges. Reasonable fees and charges may be levied against a qualified tuition program pursuant to an agreement for services between a financial institution and the Board. Fees shall be forwarded to the Treasurer at the end of each month.

**Historical Note**

New Section R2-13-202 recodified from Section R7-3-502 with clerical amendments made at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

**R2-13-203. Changing Designated Beneficiary**

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in § 529 of the Code, A.R.S. § 15-1871(8) or both, of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary on a form prescribed by the financial institution and approved by the Treasurer. The change shall be effective upon the financial institution's receipt of such certification.

**Historical Note**

New Section R2-13-203 recodified from Section R7-3-503 at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-203 repealed, new Section R2-13-203 renumbered from R2-13-204 and amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

**R2-13-204. Account Balance Limitations**

## CHAPTER 13. STATE BOARD OF INVESTMENT

- A. For each designated beneficiary, the balance in all qualified tuition programs, as defined in § 529 of the Code, shall not exceed the lesser of:
1. The product (rounded down to the nearest multiple of \$1000) of 7 and the average one year's undergraduate tuition, fees, room and board at the ten independent four year eligible educational institutions as measured and last published by the College Board's Independent College 500 Index that have the largest total direct charges. For purposes of this subsection, "total direct charges" means the charges determined for each eligible educational institution by multiplying the eligible educational institution's undergraduate enrollment by the reported tuition, fees, room and board for an on-campus student at the eligible educational institution; or
  2. The cost in current dollars of qualified higher education expenses the account owner reasonably anticipates the designated beneficiary will incur.
- B. No person shall make any contribution to a qualified tuition program during an account year that would cause the sum of the account balances in all qualified tuition programs of the designated beneficiary as of the first day of the account year plus contributions made during the account year less withdrawals during the account year to or from any such account to exceed the maximum allowable balance set forth in subsection (A). Any excess contributions with respect to a designated beneficiary shall be promptly withdrawn as a non-qualified withdrawal or transferred to another account in accordance with A.R.S. § 15-1875(E) or A.R.S. § 15-1875(F).
- C. No financial institution shall accept for deposit in any account a contribution if the contribution would cause the sum of the values (as of the beginning of an account year) of all qualified tuition programs of the designated beneficiary that are managed by the financial institution and contributions to such accounts less withdrawals from such accounts during the account year to exceed the maximum allowable balance set forth in subsection (A).
- D. Each year, the Board shall review the amounts set forth in subsection (A).
- E. Persons making a contribution to an account shall certify that as to the account's designated beneficiary, and to the best of the contributor's knowledge, the contribution shall not cause the balances in all qualified tuition programs to exceed the account balance limitations described in subsection (A).
- F. If the Treasurer determines that contributions have been made to program accounts in violation of subsection (B) or (C), the Treasurer shall notify the Board, the designated beneficiary and the account owners of all accounts of such designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of the qualified tuition programs through distributions and/or changes in beneficiaries to a level less than or equal to the maximum account balance described in subsection (A). If the balances are not appropriately reduced, the Treasurer will disqualify such accounts in reverse order of their date of opening until the sum of the balances in the accounts does not exceed the maximum allowable balance set forth in subsection (A). This subsection shall not apply to any contribution made at a time when such contributions did not cause the account balance limits to be exceeded.

**Historical Note**

New Section R2-13-204 recodified from Section R7-3-504 at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-204 renumbered to R2-13-203, new Section R2-13-204 renumbered from

R2-13-205 and amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

**R2-13-205. Withdrawals; Uses of Withdrawn Funds**

- A. An account owner may withdraw funds from an account at any time. The designated beneficiary of an account shall not have any authority to withdraw funds from an account unless the account is structured to give the designated beneficiary such right of withdrawal upon matriculation or upon incurring qualified higher education expenses as defined in A.R.S. § 15-1871(12) and § 529 of the Code.
- B. Neither the Board nor the Treasurer are responsible for tracking how withdrawn funds are used. It is the responsibility of the account owner to ensure that withdrawn funds are used for qualified higher education expenses as defined in A.R.S. § 15-1871(12) and § 529 of the Code, and to substantiate any exemption from tax or penalty.

**Historical Note**

New Section R2-13-205 recodified from Section R7-3-505 with clerical amendments made at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-205 renumbered to R2-13-204, new Section R2-13-205 renumbered from R2-13-206 and amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

**R2-13-206. Oversight of Financial Institutions**

- A. Disclaimer of state liability. Unless otherwise expressly agreed upon by the Treasurer in writing, every document pertaining to the AZ529, Arizona's Education Savings Plan shall clearly indicate that "The account is not insured by the state of Arizona and neither the principal deposited nor the investment return is guaranteed by the state of Arizona." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the AZ529, Arizona's Education Savings Plan. This language may also be hand-written or typed or provided by any other method to facilitate compliance.
- B. No Investment Direction. A financial institution shall not permit an account owner to move funds, once deposited, that in any way would result in investment direction of the funds or earnings on the funds except to the extent permissible under § 529 of the Code and any applicable regulations and guidance.
- C. Reporting Requirements.
  1. At least quarterly, every financial institution shall provide each account owner with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned, and an ending balance. Additionally, the statement for the fourth quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, a year-end balance, and any distributions paid.
  2. Within the time-frames established by the Code, financial institutions, at the request of the Treasurer, shall provide Form 1099Q to all distributees.
  3. A copy of the statement described in (C)(1) and (2) shall be sent to the Treasurer. Additionally, each financial institution shall provide the Treasurer with the information required by A.R.S. § 15-1874(H).
- D. Access to books and records. No contractor shall have access to the books and records of a financial institution or Program Manager unless the Treasurer or its designee first approves, with or without modification, such request for access.
- E. Non-renewal. The Board's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).

## CHAPTER 13. STATE BOARD OF INVESTMENT

## F. Marketing programs.

1. Any financial institution or group of financial institutions that wishes to engage in its own marketing program for the AZ529, Arizona's Education Savings Plan may do so provided that any proposed marketing program is first submitted to the Treasurer for review. If, within 60 days, the Treasurer does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
2. Any financial institution or group of financial institutions that chooses to engage in its own marketing program may petition the Treasurer for a credit against future marketing fees.

**Historical Note**

New Section R2-13-206 recodified from Section R7-3-506 at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-206 renumbered to R2-13-205, new Section R2-13-206 renumbered from R2-13-207 and amended by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

**R2-13-207. IRS Regulations, Rulings, Notices, and Other Guidance**

- A. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program may adopt or undertake without jeopardizing its exemption under § 529 of the Code, (ii) such guidance is less restrictive than any rule contained in this Article, and (iii) the more restrictive rule was not mandated by A.R.S. §§ 15-1871 to 15-1877, then the more restrictive rule shall be deemed lib-

eralized to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 or any requirements for a program to qualify as a qualified tuition program under § 529 of the Code.

- B. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program shall or shall not adopt or undertake to avoid jeopardizing its exemption under § 529 of the Code and (ii) the rules contained in this Article or the statutes contained in A.R.S. §§ 15-1871 to 15-1877 do not include such requirement or prohibition, then these rules shall be deemed amended to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 to adopt such requirement or prohibition.

**Historical Note**

New Section R2-13-207 recodified from Section R7-3-507 with clerical amendments made at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-207 renumbered to R2-13-206, new Section R2-13-207 renumbered from R2-13-208 by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

**R2-13-208. Renumbered****Historical Note**

New Section R2-13-208 recodified from Section R7-3-508 with clerical amendments made at 27 A.A.R. 1656, with an immediate effective date of September 23, 2021; Section R2-13-208 renumbered to R2-13-207 by exempt rulemaking at 27 A.A.R. 1650, effective September 28, 2021 (Supp. 21-3).

State of Arizona  
Senate  
Fifty-fourth Legislature  
Second Regular Session  
2020

**CHAPTER 88**  
**SENATE BILL 1528**

AN ACT

AMENDING SECTIONS 15-1871, 15-1872, 15-1873, 15-1874, 15-1875, 15-1878, 15-1879, 35-311 AND 41-172, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-175; APPROPRIATING MONIES; RELATING TO THE FAMILY COLLEGE SAVINGS PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1871, Arizona Revised Statutes, is amended to  
3 read:

4 15-1871. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Account" means an individual trust account in the fund  
7 established as prescribed in this article.

8 2. "Account owner" means the person who enters into a tuition  
9 savings agreement pursuant to this article, who is an account owner within  
10 the meaning of section 529 of the internal revenue code and who is  
11 designated at the time an account is opened as having the right to  
12 withdraw monies from the account before the account is disbursed to or for  
13 the benefit of the designated beneficiary.

14 ~~3. "Commission" means the commission for postsecondary education~~  
15 ~~established by section 15-1851.~~

16 ~~4. "Committee" means the family college savings program oversight~~  
17 ~~committee.~~

18 3. "BOARD" MEANS THE STATE BOARD OF INVESTMENT.

19 ~~5.~~ 4. "Designated beneficiary" means a person who qualifies as a  
20 designated beneficiary under section 529 of the internal revenue code and,  
21 except as provided in section 15-1875, subsections P and Q, with respect  
22 to an account, who is designated at the time the account is opened as the  
23 person whose qualified higher education expenses are expected to be paid  
24 from the account or, if this designated beneficiary is replaced in  
25 accordance with section 15-1875, subsections D, E and F, the replacement  
26 beneficiary.

27 ~~6.~~ 5. "Eligible educational institution" means an institution of  
28 higher education that qualifies under section 529 of the internal revenue  
29 code as an eligible educational institution.

30 ~~7.~~ 6. "Financial institution" means THE STATE TREASURER'S OFFICE  
31 OR any bank, commercial bank, national bank, savings bank, savings and  
32 loan association, credit union, insurance company, brokerage firm or other  
33 similar entity that is authorized to do business in this state.

34 ~~8.~~ 7. "Fund" means the family college savings program trust fund  
35 that constitutes a public instrumentality of this state and that is  
36 established by section 15-1873.

37 ~~9.~~ 8. "Member of the family" means any of the following:

38 (a) A son or daughter of a person or a descendant of the son or  
39 daughter of the person.

40 (b) A stepson or stepdaughter of a person.

41 (c) A brother, sister, stepbrother or stepsister of a person. For  
42 the purposes of this subdivision, "brother" and "sister" includes a  
43 brother or sister by the half-blood.

44 (d) The father or mother of a person or the ancestor of the father  
45 or mother of a person.

1 (e) A stepfather or stepmother of a person.

2 (f) A son or daughter of a person's brother or sister. For the  
3 purposes of this subdivision, "brother" and "sister" includes a brother or  
4 sister by the half-blood.

5 (g) A brother or sister of the person's father or mother. For the  
6 purposes of this subdivision, "brother" and "sister" includes a brother or  
7 sister by the half-blood.

8 (h) A son-in-law, daughter-in-law, father-in-law, mother-in-law,  
9 brother-in-law or sister-in-law of a person.

10 (i) The spouse of a person or the spouse of any individual  
11 described in this paragraph.

12 (j) A first cousin of a person.

13 (k) Any individual who meets the criteria for family membership  
14 described in this paragraph as a result of legal adoption.

15 ~~10.~~ 9. "Nonqualified withdrawal" means a withdrawal from an  
16 account other than one of the following:

17 (a) A qualified withdrawal.

18 (b) A withdrawal made as the result of the death or disability of  
19 the designated beneficiary of an account.

20 (c) A withdrawal that is made on the account of a scholarship, or  
21 the allowance or payment described in section 135(d)(1)(B) or (C) of the  
22 internal revenue code, and that is received by the designated beneficiary,  
23 but only to the extent of the amount of this scholarship, allowance or  
24 payment.

25 (d) A rollover or change of designated beneficiary.

26 ~~11.~~ 10. "Person" means an individual, an individual's legal  
27 representative or any other legal entity authorized to establish a savings  
28 account under section 529 of the internal revenue code and the  
29 corresponding regulations.

30 ~~12.~~ 11. "Program" means the family college savings program that is  
31 established under this article and that constitutes a qualified tuition  
32 program as defined in section 529 of the internal revenue code.

33 ~~13.~~ 12. "Qualified higher education expenses":

34 (a) Means:

35 (i) Tuition, fees, books, supplies, room and board and equipment  
36 required for a designated beneficiary to enroll at or attend an eligible  
37 educational institution.

38 (ii) Expenses for special needs services in the case of a special  
39 needs beneficiary that are incurred in connection with enrolling or  
40 attending, if these expenses meet the definition of qualified higher  
41 education expenses in section 529 of the internal revenue code.

42 (iii) Expenses to purchase a computer, peripheral equipment,  
43 computer software or internet access and related services if the computer  
44 equipment, software or services are to be used primarily by the  
45 beneficiary during the years the beneficiary is enrolled at an eligible

1 educational institution and if these expenses meet the definition of  
2 qualified higher education expenses in section 529 of the internal revenue  
3 code.

4 (iv) EXPENSES FOR FEES, BOOKS, SUPPLIES AND EQUIPMENT REQUIRED FOR  
5 A DESIGNATED BENEFICIARY TO PARTICIPATE IN AN APPRENTICESHIP PROGRAM THAT  
6 IS REGISTERED AND CERTIFIED WITH THE UNITED STATES SECRETARY OF LABOR  
7 UNDER SECTION 1 OF THE NATIONAL APPRENTICESHIP ACT (50 STAT. 664; 29  
8 UNITED STATES CODE SECTION 50) IF THESE EXPENSES MEET THE DEFINITION OF  
9 QUALIFIED HIGHER EDUCATION EXPENSES IN SECTION 529 OF THE INTERNAL REVENUE  
10 CODE.

11 (b) Includes tuition to enroll in or attend an elementary or  
12 secondary public, private or religious school pursuant to section 529 of  
13 the internal revenue code.

14 (c) INCLUDES AMOUNTS PAID AS PRINCIPAL OR INTEREST ON ANY QUALIFIED  
15 EDUCATION LOAN AS DEFINED IN SECTION 221(d) OF THE INTERNAL REVENUE CODE  
16 OF THE DESIGNATED BENEFICIARY OR A BROTHER, SISTER, STEPBROTHER OR  
17 STEPSISTER OF THE DESIGNATED BENEFICIARY PURSUANT TO SECTION 529 OF THE  
18 INTERNAL REVENUE CODE.

19 ~~14.~~ 13. "Qualified withdrawal" means a withdrawal from an account  
20 to pay ~~either~~ ANY OF THE FOLLOWING:

21 (a) The qualified higher education expenses of the designated  
22 beneficiary of the account, but only if the withdrawal is made in  
23 accordance with this article.

24 (b) Tuition of less than \$10,000 to enroll in or attend an  
25 elementary or secondary public, private or religious school pursuant to  
26 section 529 of the internal revenue code of the designated beneficiary of  
27 the account, but only if the withdrawal is made in accordance with this  
28 article.

29 (c) AMOUNTS PAID AS PRINCIPAL OR INTEREST ON ANY QUALIFIED  
30 EDUCATION LOAN AS DEFINED IN SECTION 221(d) OF THE INTERNAL REVENUE CODE  
31 OF THE DESIGNATED BENEFICIARY OR A BROTHER, SISTER, STEPBROTHER OR  
32 STEPSISTER OF THE DESIGNATED BENEFICIARY, BUT ONLY IF THE WITHDRAWAL IS  
33 MADE IN ACCORDANCE WITH THIS ARTICLE. THE AMOUNT OF QUALIFIED WITHDRAWALS  
34 UNDER THIS ARTICLE WITH RESPECT TO THE LOANS OF ANY DESIGNATED BENEFICIARY  
35 OR A BROTHER, SISTER, STEPBROTHER OR STEPSISTER OF THE DESIGNATED  
36 BENEFICIARY MAY NOT EXCEED \$10,000, REDUCED BY THE AMOUNT OF WITHDRAWALS  
37 SO TREATED FOR ALL PRIOR TAXABLE YEARS.

38 ~~15.~~ 14. "Section 529 of the internal revenue code" means section  
39 529 of the internal revenue code of 1986, as amended, and the final  
40 regulations issued pursuant to that section.

41 15. "TREASURER" MEANS THE STATE TREASURER.

42 16. "Trust interest" means an account owner's interest in the fund  
43 created by a tuition savings agreement for the benefit of a designated  
44 beneficiary.



1       ~~D.~~ A. The ~~committee~~ BOARD shall ~~recommend~~ APPROVE financial  
2 institutions ~~for approval by the commission~~ to act as the depositories and  
3 managers of family college savings accounts pursuant to section 15-1874.

4       ~~E.~~ B. The ~~committee~~ BOARD may ~~submit proposed~~ ADOPT rules ~~to the~~  
5 ~~commission~~ to assist in ~~the implementation~~ IMPLEMENTING and ~~administration~~  
6 ~~of~~ ADMINISTERING this article.

7       ~~F.~~ C. Members of the ~~committee~~ BOARD are immune from personal  
8 liability with respect to all actions that are taken in good faith and  
9 within the scope of the ~~committee's~~ BOARD'S authority.

10       Sec. 3. Section 15-1873, Arizona Revised Statutes, is amended to  
11 read:

12       15-1873. Treasurer; powers and duties; family college savings  
13 program trust fund

14       A. The ~~commission~~ TREASURER shall:

15       1. Develop and implement the program in a manner consistent with  
16 this article ~~through the adoption of~~ BY ADOPTING rules, guidelines and  
17 procedures.

18       2. Retain professional services, if necessary, including  
19 accountants, auditors, consultants and other experts.

20       3. Seek rulings and other guidance from the United States  
21 department of the treasury and the internal revenue service relating to  
22 the program.

23       4. Make changes to the program required for the participants in the  
24 program to obtain the federal income tax benefits or treatment provided by  
25 section 529 of the internal revenue code.

26       5. Interpret, in rules, policies, guidelines and procedures, ~~the~~  
27 ~~provisions of~~ this article broadly in light of its purpose and objectives.

28       6. Charge, impose and collect administrative fees and service  
29 charges in connection with any agreement, contract or transaction relating  
30 to the program.

31       7. Negotiate and select the financial institution or institutions  
32 to act as the depository and manager of the program in accordance with  
33 this article. ON APPROVAL BY THE BOARD, THE TREASURER MAY USE EXISTING  
34 INVESTMENT FUNDS ESTABLISHED PURSUANT TO SECTIONS 35-314.03, 35-316 AND  
35 35-326 FOR THIS PURPOSE.

36       ~~8. As an agency of this state, act as trustee of the fund.~~

37       ~~9.~~ 8. Maintain the program on behalf of this state as required by  
38 section 529 of the internal revenue code.

39       ~~10.~~ 9. Enter into tuition savings agreements with account owners  
40 pursuant to this article.

41       B. The family college savings program trust fund is established  
42 consisting of the assets of the family college savings program. The  
43 ~~commission~~ TREASURER shall administer the fund and THE BOARD shall act as  
44 the ~~sole trustee~~ TRUSTEE of the fund. Monies in the fund are continuously  
45 appropriated. The fund is designated a public instrumentality of this

1 state that is created for an essential public purpose. Trust interests in  
2 the fund shall be designated by the ~~commission~~ TREASURER for each account  
3 owner. The fund shall be separated into a trust account and an operating  
4 account. The trust account shall include amounts received by the family  
5 college savings program from account owners pursuant to tuition savings  
6 agreements and interest and investment income earned by the fund. The  
7 ~~commission~~ TREASURER shall make transfers from the trust account to the  
8 operating account as necessary for the immediate payment of obligations  
9 under tuition savings agreements, operating expenses and administrative  
10 costs of the family college savings program. The ~~commission~~ TREASURER  
11 shall deposit and invest monies or other amounts in the fund with  
12 financial institutions in accordance with section 15-1874.

13 Sec. 4. Section 15-1874, Arizona Revised Statutes, is amended to  
14 read:

15 15-1874. Use of contractor as account depository and manager

16 A. The ~~commission~~ TREASURER shall implement the operation of the  
17 program through the use of one or more financial institutions to act as  
18 the depositories of the fund and managers of the program. Under the  
19 program, persons may submit applications for enrollment in the program and  
20 establish accounts in the fund at the financial institution. Monies paid  
21 by account owners to the fund for deposit in accounts maintained by the  
22 fund at a financial institution shall be paid to the financial institution  
23 as an agent of the fund and the tuition savings agreements shall provide  
24 that all monies paid by account owners to fund accounts held at financial  
25 institutions are being paid to the fund.

26 B. The ~~committee~~ TREASURER shall solicit proposals from financial  
27 institutions to act as the depositories of fund monies and managers of the  
28 program. Financial institutions that submit proposals must describe the  
29 financial instruments that will be held in accounts. ~~The commission shall~~  
30 ~~select proposals from financial institutions to act as depositories and~~  
31 ~~managers, and~~ The solicitation and selection process is exempt from the  
32 procurement code requirements of title 41, chapter 23.

33 C. On the recommendation of the ~~committee~~ TREASURER, the ~~commission~~  
34 BOARD shall select the financial institution or institutions to implement  
35 the program from among bidding financial institutions that demonstrate the  
36 most advantageous combination, both to potential program participants and  
37 this state, of the following factors:

- 38 1. Financial stability and integrity.
- 39 2. The safety of the investment instruments being offered, taking  
40 into account any insurance provided with respect to these instruments.
- 41 3. The ability of the investment instruments to track estimated  
42 costs of higher education as calculated by the ~~commission~~ TREASURER and  
43 provided by the financial institution to the account holder.

1           4. The ability of the financial institutions, directly or through a  
2 subcontract, to satisfy ~~record-keeping~~ RECORDKEEPING and reporting  
3 requirements.

4           5. The financial institution's plan for promoting the program and  
5 the investment it is willing to make to promote the program.

6           6. The fees, if any, proposed to be charged to persons for  
7 maintaining accounts.

8           7. The minimum initial deposit and minimum contributions that the  
9 financial institution will require for the investment of fund monies and  
10 the willingness of the financial institution to accept contributions  
11 through payroll deduction plans and other deposit plans.

12           8. Any other benefits to this state or its residents included in  
13 the proposal, including an account opening fee payable to the ~~commission~~  
14 TREASURER by the account owner and an additional fee from the financial  
15 institution for statewide program marketing by the ~~commission~~ TREASURER.

16           D. ~~ON APPROVAL BY THE BOARD~~, the ~~commission~~ TREASURER shall enter  
17 into a contract with a financial institution, or except as provided in  
18 subsection E of this section, contracts with financial institutions, to  
19 serve as program managers and depositories. Program management contracts  
20 shall provide the terms and conditions by which financial institutions  
21 shall sell interests in the fund to account owners, invest monies in the  
22 fund and manage the program.

23           E. The ~~commission~~ BOARD may select more than one financial  
24 institution and investment for the program if both of the following  
25 conditions exist:

26           1. The United States internal revenue service has provided guidance  
27 that giving a contributor a choice of two investment instruments under a  
28 state plan will not cause the plan to fail to qualify for favorable tax  
29 treatment under section 529 of the internal revenue code.

30           2. The ~~commission~~ TREASURER concludes that the choice of instrument  
31 vehicles is in the best interest of college savers and will not interfere  
32 with the promotion of the program.

33           F. A program manager shall:

34           1. Take all action required to keep the program in compliance with  
35 the requirements of this article and all action not contrary to this  
36 article or its contract to manage the program so that it is treated as a  
37 qualified tuition plan under section 529 of the internal revenue code.

38           2. Keep adequate records of each of the fund's accounts, keep each  
39 account segregated from each other account and provide the ~~commission~~  
40 TREASURER with the information necessary to prepare statements required by  
41 section 15-1875, subsections M, N and O or file these statements on behalf  
42 of the ~~commission~~ TREASURER.

43           3. Compile and total information contained in statements required  
44 to be prepared under section 15-1875, subsections M, N and O and provide  
45 these compilations to the ~~commission~~ TREASURER.

1           4. If there is more than one program manager, provide the  
2 ~~commission~~ TREASURER with this information to assist the ~~commission~~  
3 TREASURER to determine compliance with section 15-1875, subsection L.

4           5. Provide representatives of the ~~commission~~ TREASURER, including  
5 other contractors or other state agencies, access to the books and records  
6 of the program manager to the extent needed to determine compliance with  
7 the contract.

8           6. Hold all accounts in the name of and for the benefit of the fund  
9 and this state.

10          G. Any contract executed between the ~~commission~~ TREASURER and a  
11 financial institution pursuant to this section shall be for a term of at  
12 least three years and not more than seven years.

13          H. The ~~commission~~ BOARD may terminate a contract with a financial  
14 institution at any time for good cause on the recommendation of the  
15 ~~committee~~ TREASURER. If a contract is terminated pursuant to this  
16 subsection, the ~~commission~~ TREASURER shall take custody of accounts held  
17 at that financial institution and shall seek to promptly transfer the  
18 accounts to another financial institution that is selected as a program  
19 manager and into investment instruments as similar to the original  
20 investments as possible.

21          I. If the ~~commission~~ TREASURER determines not to renew the  
22 appointment of a financial institution as a program manager, the  
23 ~~commission~~ BOARD may take action consistent with the interests of the  
24 program and the accounts and in accordance with its duties as the trustee  
25 of the fund, including termination of all services or continuation of  
26 certain management and administrative services of that financial  
27 institution for accounts of the program managed by that financial  
28 institution during its term as a program manager, if any continuation of  
29 services is only permitted under the following conditions:

30           1. The ~~commission~~ TREASURER and the financial institution enter  
31 into a written agreement specifying the rights of the program and the  
32 ~~commission~~ TREASURER and the responsibilities of the financial  
33 institution, including the standards that continue to be applicable to the  
34 accounts as accounts of the program.

35           2. Any services provided by the financial institution to accounts  
36 continue to be subject to the control of the ~~commission~~ BOARD as the  
37 trustee of the fund with responsibility of all accounts of the program.

38          Sec. 5. Section 15-1875, Arizona Revised Statutes, is amended to  
39 read:

40           15-1875. Program requirements

41          A. The program shall be operated through the use of accounts in the  
42 fund established by account owners. Payments to the fund for  
43 participation in the program shall be made by account owners pursuant to  
44 tuition savings agreements. An account may be opened by any person who

1 desires to invest in the fund and to save to pay qualified higher  
2 education expenses by satisfying each of the following requirements:

3 1. Completing an application in the form prescribed by the  
4 ~~commission~~ TREASURER. The application shall include the following  
5 information:

6 (a) The name, address and social security number or employer  
7 identification number of the contributor.

8 (b) The name, address and social security number of the account  
9 owner if the account owner is not the contributor.

10 (c) The name, address and social security number of the designated  
11 beneficiary.

12 (d) The certification relating to no excess contributions required  
13 by subsection L of this section.

14 (e) Any other information that the ~~commission~~ TREASURER may  
15 require.

16 2. Paying the onetime application fee established by the ~~commission~~  
17 TREASURER.

18 3. Making the minimum contribution required by the ~~commission~~  
19 TREASURER or by opening an account.

20 4. Designating the type of account to be opened if more than one  
21 type of account is offered.

22 B. Any person may make contributions to an account after the  
23 account is opened.

24 C. Contributions to accounts may be made only in cash.

25 D. An account owner may change the designated beneficiary of an  
26 account to an individual who is a member of the family of the former  
27 designated beneficiary in accordance with procedures established by the  
28 ~~commission~~ TREASURER.

29 E. On the direction of an account owner, all or a portion of an  
30 account may be transferred to another account of which the designated  
31 beneficiary is a member of the family of the designated beneficiary of the  
32 transferee account.

33 F. Changes in designated beneficiaries and rollovers under this  
34 section are not ~~permitted~~ ALLOWED if the changes or rollovers would  
35 violate either of the following:

36 1. Subsection L of this section, relating to excess contributions.

37 2. Subsection I of this section, relating to investment choice.

38 G. Each account shall be maintained separately from each other  
39 account under the program.

40 H. Separate records and accounting shall be maintained for each  
41 account for each designated beneficiary.

42 I. A contributor to, account owner of or designated beneficiary of  
43 any account may not direct the investment, within the meaning of section  
44 529 of the internal revenue code, of any contributions to an account or  
45 the earnings from the account.

1 J. If the ~~commission~~ TREASURER terminates the authority of a  
2 financial institution to hold accounts and accounts must be moved from  
3 that financial institution to another financial institution, the  
4 ~~commission~~ TREASURER shall select the financial institution and type of  
5 investment to which the balance of the account is moved unless the  
6 internal revenue service provides guidance stating that allowing the  
7 account owner to select among several financial institutions that are then  
8 contractors would not cause a plan to cease to be a qualified tuition  
9 plan.

10 K. Neither an account owner nor a designated beneficiary may use an  
11 interest in an account as security for a loan. Any pledge of an interest  
12 in an account is of no force and effect.

13 L. On the recommendation of the ~~committee~~ TREASURER, the ~~commission~~  
14 BOARD shall adopt rules to prevent contributions on behalf of a designated  
15 beneficiary in excess of those necessary to pay the qualified higher  
16 education expenses of the designated beneficiaries. The rules shall  
17 address the following:

18 1. Procedures for aggregating the total balances of multiple  
19 accounts established for a designated beneficiary.

20 2. The establishment of a maximum total balance for the purpose of  
21 prohibiting contributions to accounts established for a designated  
22 beneficiary if the contributions would cause the maximum total balance to  
23 be exceeded.

24 3. The ~~commission~~ BOARD shall review the quarterly reports received  
25 from participating financial institutions and certify that the balance in  
26 all qualified tuition programs, as defined in section 529 of the internal  
27 revenue code, of which that person is the designated beneficiary does not  
28 exceed the lesser of:

29 (a) A maximum college savings amount established by the ~~commission~~  
30 BOARD from time to time.

31 (b) The cost in current dollars of qualified higher education  
32 expenses that the contributor reasonably anticipates the designated  
33 beneficiary will incur.

34 4. Requirements that any excess contributions with respect to a  
35 designated beneficiary be promptly withdrawn in a nonqualified withdrawal  
36 or rolled over to another account in accordance with this section.

37 M. If there is any distribution from an account to any person or  
38 for the benefit of any person during a calendar year, the distribution  
39 shall be reported to the internal revenue service and the account owner or  
40 the designated beneficiary to the extent required by federal law.

41 N. The financial institution shall provide statements to each  
42 account owner at least once each year within thirty-one days after the  
43 twelve-month period to which they relate. The statement shall identify  
44 the contributions made during a preceding twelve-month period, the total  
45 contributions made through the end of the period, the value of the account

1 as of the end of this period, distributions made during this period and  
2 any other matters that the commission requires be reported to the account  
3 owner.

4 O. Statements and information returns relating to accounts shall be  
5 prepared and filed to the extent required by federal or state tax law.

6 P. A state or local government or organizations described in  
7 section 501(c)(3) of the internal revenue code may open and become the  
8 account owner of an account to fund scholarships for persons whose  
9 identity will be determined after an account is opened.

10 Q. In the case of any account described in subsection P of this  
11 section, the requirement that a designated beneficiary be designated when  
12 an account is opened does not apply and each person who receives an  
13 interest in the account as a scholarship shall be treated as a designated  
14 beneficiary with respect to the interest.

15 R. Any social security numbers, addresses or telephone numbers of  
16 individual account holders and designated beneficiaries that come into the  
17 possession of the ~~commission~~ TREASURER are confidential, are not public  
18 records and shall not be released by the ~~commission~~ TREASURER.

19 S. An account owner may transfer ownership rights to another  
20 eligible account owner.

21 T. An account owner may designate successor account owners.

22 U. Through December 31, 2025, on direction of an account owner, up  
23 to \$15,000 of an account may roll over to an achieving a better life  
24 experience act account established pursuant to 26 United States Code  
25 section 529A.

26 Sec. 6. Section 15-1878, Arizona Revised Statutes, is amended to  
27 read:

28 15-1878. Limits of article

29 A. ~~Nothing in~~ This article ~~shall be construed to~~ DOES NOT:

30 1. Give any designated beneficiary any rights or legal interest  
31 with respect to an account unless the designated beneficiary is the  
32 account owner.

33 2. Guarantee that a designated beneficiary will be admitted to an  
34 eligible educational institution or be allowed to continue enrollment at  
35 or graduate from an eligible educational institution located in this state  
36 after admission.

37 3. Establish state residency for a person merely because the person  
38 is a designated beneficiary.

39 4. Guarantee that amounts saved pursuant to the program will be  
40 sufficient to cover the qualified higher education expenses of a  
41 designated beneficiary.

42 B. ~~Nothing in~~ This article ~~establishes~~ DOES NOT ESTABLISH any  
43 obligation of this state or any agency or instrumentality of this state to  
44 guarantee for the benefit of any account owner, contributor to an account  
45 or designated beneficiary any of the following:

- 1           1. The return of any amounts contributed to an account.
- 2           2. The rate of interest or other return on any account.
- 3           3. The payment of interest or other return on any account.
- 4           4. Tuition rates or the cost of related higher education
- 5 expenditures.

6           C. Under rules adopted by the ~~commission~~ TREASURER, every contract,  
7 application, deposit slip or other similar document that may be used in  
8 connection with a contribution to an account shall clearly indicate that  
9 the account is not insured by this state and neither the principal  
10 deposited nor the investment return is guaranteed by this state.

11           Sec. 7. Section 15-1879, Arizona Revised Statutes, is amended to  
12 read:

13           15-1879. Annual report

14           The ~~commission~~ TREASURER shall submit an annual report to the  
15 speaker of the house of representatives, the president of the senate and  
16 the governor by March 1 that summarizes the ~~commission's~~ TREASURER'S  
17 findings and recommendations concerning the program established by this  
18 article.

19           Sec. 8. Section 35-311, Arizona Revised Statutes, is amended to  
20 read:

21           35-311. State board of investment; membership; powers and  
22 duties

23           A. The state board of investment is established consisting of the  
24 state treasurer, the director of the department of administration or the  
25 director of the department of administration's designee, the director of  
26 the department of insurance and financial institutions or the director of  
27 the department of insurance and financial institutions' designee and two  
28 individuals appointed by the state treasurer, one of whom has verifiable  
29 expertise in investment management and one of whom represents a public  
30 entity with current deposits in a local government investment pool. The  
31 state treasurer is chairman of the board. The board shall keep an  
32 accurate record of its proceedings. A certified copy of the record is  
33 prima facie evidence of the matters appearing in the record in any  
34 court. A meeting of the board may be called at any time by the chairman  
35 or a majority of the board members.

36           B. The state board of investment shall:

- 37           1. Hold regular monthly meetings.
- 38           2. Review investments of treasury monies.
- 39           3. Serve as ~~trustees~~ TRUSTEE of the permanent state land funds and  
40 ~~provide management of~~ MANAGE the assets of the funds consistent with the  
41 requirements of article X, section 7, Constitution of Arizona.
- 42           4. Serve as ~~trustees~~ TRUSTEE of any endowments established pursuant  
43 to section 35-314.03.

44           5. SERVE AS TRUSTEE OF THE FAMILY COLLEGE SAVINGS PROGRAM  
45 ESTABLISHED BY TITLE 15, CHAPTER 14, ARTICLE 7.

1 C. The state treasurer shall furnish to the board of investment at  
2 its regular monthly meeting a report of the performance of current  
3 investments and a report of the current investments as of the close of  
4 business of the preceding month. The state treasurer shall make these  
5 reports available for inspection by the public during normal working hours  
6 at the office of the state treasurer for a period of time of not less than  
7 two years after the date of the report.

8 D. The board of investment may order the state treasurer to sell  
9 any of the securities, and any order shall specifically describe the  
10 securities and fix the time period during which they are to be sold.  
11 Securities so ordered to be sold shall be sold for cash by the state  
12 treasurer at the current market price. The state treasurer and the  
13 members of the board are not accountable for any loss occasioned by sales  
14 of securities at prices lower than their book value. Any loss shall be  
15 charged against earnings received from interest or capital gains on the  
16 applicable treasury monies.

17 E. The board may establish standards in addition to those  
18 established by section 35-317, subsection A for the qualification of  
19 agents acting pursuant to section 35-317, subsection B.

20 Sec. 9. Section 41-172, Arizona Revised Statutes, is amended to  
21 read:

22 41-172. Powers and duties; administering oaths; appointment  
23 of deputy state treasurer

24 A. The state treasurer shall:

25 1. Authenticate writings and documents certified by ~~him~~ THE STATE  
26 TREASURER with the TREASURER'S seal of ~~his~~ office.

27 2. Receive and keep in secure custody all monies that belong to ~~the~~  
28 THIS state and that are not required to be received and kept by some other  
29 person.

30 3. File and keep the documentation delivered to the treasurer when  
31 monies are deposited into the treasury.

32 4. Deliver to each person depositing money into the treasury a  
33 confirmation showing the date, amount and depositing agency and shall  
34 provide a unique identifying number for each confirmation.

35 5. Pay warrants drawn by the department of administration in the  
36 order in which they are presented.

37 6. Keep an account of all monies received and disbursed, and keep  
38 separate accounts of the different funds and appropriations of ~~money~~  
39 MONIES.

40 7. Give information in writing as to the condition of the state  
41 treasury, or on any subject relating to the duties of the treasurer, at  
42 the request of a member of the legislature.

43 8. Deliver to the governor and the department of administration,  
44 monthly, an accurate statement of receipts and expenditures of public  
45 monies for the preceding month, containing a complete exhibit of all the

1 public monies received and paid from the state treasury, showing, under  
2 separate heads, on what accounts and from what sources received, and for  
3 what particular object or service the monies have been paid. The  
4 treasurer shall deliver to the governor a similar statement on or before  
5 November 1 each year for the preceding fiscal year. The statement shall  
6 also include an estimate of the invested balance including the general  
7 fund share of that balance as of June 30 of the preceding fiscal year.  
8 The statements are public records available for inspection at the office  
9 of the state treasurer.

10 9. On or before February 1 of each year, in coordination with the  
11 director of the department of administration, submit to the joint  
12 legislative budget committee a report explaining any differences between  
13 the department of administration's estimate of the previous fiscal year's  
14 state general fund ending balance submitted pursuant to section 35-131 and  
15 the state treasurer's estimate of the invested balance including the **STATE**  
16 general fund share of that balance as of June 30 of the previous fiscal  
17 year submitted pursuant to paragraph 8 **OF THIS SUBSECTION**.

18 10. Exercise those specific powers of the surveyor-general as a  
19 member of the selection board established under section 37-202.

20 **11. ADMINISTER THE FAMILY COLLEGE SAVINGS PROGRAM ESTABLISHED BY**  
21 **TITLE 15, CHAPTER 14, ARTICLE 7.**

22 B. The state treasurer may administer all oaths prescribed by law  
23 in matters touching the duties of the office of the state treasurer,  
24 subject to chapter 4, article 4 of this title, may appoint a deputy state  
25 treasurer, may qualify and select investment managers or advisors pursuant  
26 to section 35-318 and shall perform other duties required by other laws of  
27 this state.

28 C. Employees of the state treasurer's office are subject to chapter  
29 4, article 4 of this title. For prospective or current employees of the  
30 state treasurer's office, the state treasurer may:

31 1. Require the submission of a full set of fingerprints for the  
32 purpose of obtaining a state and federal criminal records check pursuant  
33 to section 41-1750 and Public Law 92-544. The department of public safety  
34 may exchange this fingerprint data with the federal bureau of  
35 investigation.

36 2. Conduct a periodic review of credit standing.

37 Sec. 10. Title 41, chapter 1, article 4, Arizona Revised Statutes,  
38 is amended by adding section 41-175, to read:

39 41-175. Family college savings program advisory committee:  
40 membership; duties; committee termination

41 **A. THE STATE TREASURER SHALL APPOINT A FAMILY COLLEGE SAVINGS**  
42 **PROGRAM ADVISORY COMMITTEE TO ASSIST THE TREASURER IN PROMOTING AND**  
43 **RAISING AWARENESS OF THE FAMILY COLLEGE SAVINGS PROGRAM ESTABLISHED BY**  
44 **TITLE 15, CHAPTER 14, ARTICLE 7 TO RESIDENTS OF THIS STATE, WITH EMPHASIS**  
45 **ON INCREASING ACCESS TO THE PROGRAM AMONG ECONOMICALLY DISADVANTAGED,**

1 MINORITY AND UNDERREPRESENTED STUDENT POPULATIONS. THE ADVISORY COMMITTEE  
2 SHALL INCLUDE ALL OF THE FOLLOWING:

3 1. THE STATE TREASURER OR THE STATE TREASURER'S DESIGNEE, WHO  
4 SERVES AS CHAIRPERSON OF THE COMMITTEE.

5 2. TWO MEMBERS WHO REPRESENT COMMUNITY COLLEGE DISTRICTS IN THIS  
6 STATE, ONE OF WHOM REPRESENTS A COMMUNITY COLLEGE DISTRICT IN A COUNTY  
7 WITH A POPULATION OF FIVE HUNDRED THOUSAND PERSONS OR MORE AND ONE OF WHOM  
8 REPRESENTS A COMMUNITY COLLEGE DISTRICT IN A COUNTY WITH A POPULATION OF  
9 LESS THAN FIVE HUNDRED THOUSAND PERSONS.

10 3. ONE MEMBER WHO REPRESENTS A UNIVERSITY UNDER THE JURISDICTION OF  
11 THE ARIZONA BOARD OF REGENTS.

12 4. ONE MEMBER WHO REPRESENTS AN ACCREDITED PRIVATE EDUCATIONAL  
13 INSTITUTION IN THIS STATE OFFERING ASSOCIATE, BACCALAUREATE OR HIGHER  
14 DEGREES.

15 5. ONE MEMBER WHO REPRESENTS AN ACCREDITED PRIVATE EDUCATIONAL  
16 INSTITUTION OFFERING PRIVATE VOCATIONAL TRAINING IN THIS STATE.

17 6. ONE MEMBER WHO IS A TEACHER AND WHO CURRENTLY PROVIDES CLASSROOM  
18 INSTRUCTION IN THIS STATE.

19 7. ONE MEMBER WHO REPRESENTS A FEDERALLY RECOGNIZED INDIAN TRIBE IN  
20 THIS STATE.

21 8. ONE MEMBER WHO REPRESENTS A UNITED STATES DEPARTMENT OF  
22 LABOR-APPROVED APPRENTICESHIP PROGRAM.

23 9. TWO PUBLIC MEMBERS WHO ARE RESIDENTS OF THIS STATE.

24 B. THE COMMITTEE SHALL DO BOTH OF THE FOLLOWING:

25 1. ASSIST AND MAKE RECOMMENDATIONS TO THE STATE TREASURER REGARDING  
26 PROMOTIONAL AND INFORMATIONAL ACTIVITIES RELATING TO THE FAMILY COLLEGE  
27 SAVINGS PROGRAM.

28 2. MEET AT LEAST ONCE EACH CALENDAR QUARTER. A MAJORITY OF THE  
29 MEMBERSHIP CONSTITUTES A QUORUM FOR THE TRANSACTION OF BUSINESS.

30 C. COMMITTEE MEMBERS ARE NOT ELIGIBLE TO RECEIVE COMPENSATION OR  
31 REIMBURSEMENT OF EXPENSES.

32 D. THE STATE TREASURER'S OFFICE SHALL PROVIDE NECESSARY STAFF  
33 SERVICES TO THE COMMITTEE.

34 E. THE COMMITTEE ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2028  
35 PURSUANT TO SECTION 41-3103.

36 Sec. 11. Transfer; effect; succession; cooperation

37 A. All administrative matters, contracts and judicial and  
38 quasi-judicial actions, whether completed, pending or in process, of the  
39 commission for postsecondary education that relate to the family college  
40 savings program established by title 15, chapter 14, article 7, Arizona  
41 Revised Statutes, are transferred, on the effective date of this act, and  
42 retain the same status with the state treasurer.

43 B. All rules adopted by the commission for postsecondary education  
44 pursuant to title 15, chapter 14, article 7, Arizona Revised Statutes,

1 remain in full force until superseded by rules adopted by the state board  
2 of investment or the state treasurer, as applicable.

3 C. All FTE positions, property and records, all data and  
4 investigative findings, all obligations and all appropriated and  
5 nonappropriated monies remaining unspent and unencumbered of the  
6 commission for postsecondary education relating to the family college  
7 savings program pursuant to title 15, chapter 14, article 7, Arizona  
8 Revised Statutes, are transferred to the state treasurer and may be used  
9 for the purposes of this act.

10 D. The commission for postsecondary education shall cooperate and  
11 coordinate with the state treasurer to ensure the successful transition of  
12 the family college savings program from the commission to the state  
13 treasurer during the transfer period.

14 Sec. 12. Exemption from rulemaking

15 For the purposes of this act, the state board of investment is  
16 exempt from the rulemaking requirements of title 41, chapter 6, Arizona  
17 Revised Statutes, for one year after the effective date of this act for  
18 the purpose of adopting rules relating to the family college savings  
19 program pursuant to title 15, chapter 14, article 7, Arizona Revised  
20 Statutes, as amended by this act.

21 Sec. 13. Legislative intent

22 The legislature intends that the term of renewal of an existing  
23 appointment of a financial institution as a depository or manager of the  
24 family college savings program pursuant to title 15, chapter 14, article  
25 7, Arizona Revised Statutes, as amended by this act, that occurs before  
26 the effective date of this act not be for more than one year after the  
27 date of renewal and that no new contracts with one or more financial  
28 institutions to act as depositories or managers be entered into before the  
29 effective date of this act.

30 Sec. 14. Effective date

31 This act is effective from and after September 30, 2020.

APPROVED BY THE GOVERNOR JUNE 5, 2020.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 5, 2020.

**ARS 15-1872 AZ529, Arizona's education savings plan; state board  
of investment; rules; powers and duties (Arizona Revised  
Statutes (2022 Edition))**

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**§ 15-1872. AZ529, Arizona's education savings plan; state board of  
investment; rules; powers and duties**

A. The board shall approve financial institutions to act as the depositories and managers of AZ529, Arizona's education savings plan accounts pursuant to section 15-1874.

B. The board may adopt rules to assist in implementing and administering this article.

C. Members of the board are immune from personal liability with respect to all actions that are taken in good faith and within the scope of the board's authority.

**History:**

Amended by L. 2021, ch. 188,s. 3, eff. 9/29/2021. Amended by L. 2020, ch. 88,s. 2, eff. 10/1/2020.

**§ 15-1875. Plan requirements**

A. The plan shall be operated through the use of accounts in the fund established by account owners. Payments to the fund for participation in the plan shall be made by account owners pursuant to tuition savings agreements. An account may be opened by any person who desires to invest in the fund and to save to pay qualified higher education expenses by satisfying each of the following requirements:

1. Completing an application in the form prescribed by the treasurer. The application shall include the following information:

(a) The name, address and social security number or employer identification number of the contributor.

(b) The name, address and social security number of the account owner if the account owner is not the contributor.

(c) The name, address and social security number of the designated beneficiary.

(d) The certification relating to no excess contributions required by subsection L of this section.

(e) Any other information that the treasurer may require.

2. Paying the onetime application fee established by the treasurer.

3. Making the minimum contribution required by the treasurer or by opening an account.

4. Designating the type of account to be opened if more than one type of account is offered.

B. Any person may make contributions to an account after the account is opened.

C. Contributions to accounts may be made only in cash.

D. An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the treasurer.

E. On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.

F. Changes in designated beneficiaries and rollovers under this section are not allowed if the changes or rollovers would violate either of the following:

1. Subsection L of this section, relating to excess contributions.
2. Subsection I of this section, relating to investment choice.

G. Each account shall be maintained separately from each other account under the plan.

H. Separate records and accounting shall be maintained for each account for each designated beneficiary.

I. A contributor to, account owner of or designated beneficiary of any account may not direct the investment, within the meaning of section 529 of the internal revenue code, of any contributions to an account or the earnings from the account.

J. If the treasurer terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the treasurer shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified tuition plan.

K. Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

L. On the recommendation of the treasurer, the board shall adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules shall address the following:

1. Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary.
2. The establishment of a maximum total balance for the purpose of prohibiting contributions to accounts established for a designated beneficiary if the contributions would cause the maximum total balance to be exceeded.
3. The board shall review the quarterly reports received from participating financial institutions and certify that the balance in all qualified tuition

programs, as defined in section 529 of the internal revenue code, of which that person is the designated beneficiary does not exceed the lesser of:

(a) A maximum college savings amount established by the board from time to time.

(b) The cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur.

4. Requirements that any excess contributions with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section.

M. If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.

N. The financial institution shall provide statements to each account owner at least once each year within thirty-one days after the twelve-month period to which they relate. The statement shall identify the contributions made during a preceding twelve-month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the treasurer requires be reported to the account owner.

O. Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.

P. A state or local government or organizations described in section 501(c)(3) of the internal revenue code may open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.

Q. In the case of any account described in subsection P of this section, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.

R. Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the treasurer are confidential, are not public records and shall not be released by the treasurer.

S. An account owner may transfer ownership rights to another eligible account owner.

T. An account owner may designate successor account owners.

U. Through December 31, 2025, on direction of an account owner, up to \$15,000 of an account may roll over to an achieving a better life experience act account established pursuant to 26 United States Code section 529A.

**History:**

Amended by L. 2021, ch. 188,s. 6, eff. 9/29/2021. Amended by L. 2020, ch. 88,s. 5, eff. 10/1/2020. Amended by L. 2019, ch. 251,s. 3, eff. 8/27/2019.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Title 18, Chapter 7



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 8, 2022

**SUBJECT:** Department of Environmental Quality  
Title 18, Chapter 7

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This Five-Year-Review Report (5YRR) from the Department of Environmental Quality relates to rules in Title 18, Chapter 7 regarding Remedial Action. The report covers the following Articles:

**Article 2** - Soil Remediation Standards

**Article 3** - Prospective Purchaser Agreement

**Article 5** - Voluntary Remediation Program

**Article 6** - Declaration of Environmental Use Restriction Fee

In the last 5YRR the Department proposed to amend several of its rules if any material changes were made to the rules. The Department indicates they did not complete a rulemaking because no substantive changes were warranted.

### **Proposed Action**

Currently, the Department is proposing to amend several of its rules to improve their overall clarity, conciseness, understandability, and effectiveness. The Department plans to submit a rulemaking to the Council by July 2023.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

According to the Department:

- The economic impacts of Article 2 have not changed substantially from the last Five-Year Review Report.
- While the fees rates in Article 3 increased, the Department believes the fees represent the least burden possible to property owners, evidenced by the pace of applications for Prospective Purchaser Agreements (PPAs).
  - From 2017 to March 2022 there have been 14 executed PPAs (plus 9 pending approval).
  - From 2017 to March 2022 there were 23 PPA applications (6 were Water Quality Assurance Revolving Fund (WQARF) sites).
  - The average cost is \$2,500 for WQARF sites and \$3,600 for those that are not on the WQARF registry.
- The Voluntary Remediation Program (Article 5) provides benefits to property owners and the community while minimizing the economic impact to small businesses. The fees to participate in the program have not changed since 2001.
  - As of March 2022, there are 51 active sites in the VRP.
  - From 2017 to March 2022, there was an average of 8 sites added per year.
  - Fees collected average about \$350,000 a year over the last five years.
- The rulemaking for the fee rules in Article 6 was exempt from an EIS, but the Department believes that this Article does not have a substantial economic impact on the state's economy, small businesses, or consumers.

Stakeholders include the Department, property owners, and the general public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The agency believes that the benefits of protecting public health and the environment are greater than the costs imposed by these rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes, the Department received two comments to the rules, and adequately responded the comments.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

**R18-7-201** - Definitions  
**Appendix B**. 1997 Soil Remediation Levels (SRLs)  
**R18-7-301** - Prospective Purchaser Agreement Fee

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives with the exception of the following:

**R18-7-502** - Application Fee  
**R18-7-503** - Deposit  
**R18-7-506** - Voluntary Remediation Program Accounting  
**R18-7-507** - Account Reconciliation

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

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

Not applicable. There are no corresponding federal laws to the rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

11. **Conclusion**

For the specific reasons mentioned in the report, the Department is proposing several of its rules to improve their overall clarity, conciseness, understandability, and effectiveness. The Department plans to submit a rulemaking to the Council by July 2023.

Council staff recommends approval of this report.



Douglas A. Ducey  
Governor

ARIZONA DEPARTMENT  
OF  
ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

August 26, 2022

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, #305  
Phoenix, AZ 85007

Re: Submittal of Five Year Rule Review Report for A.A.C. Title 7, Chapter 16, Articles 2, 3, 5, and 6

Dear Chair Sornsins:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for Title 18, Chapter 7, Article 2 [Soil Remediation Standards], Article 3 [Prospective Purchaser Agreement], Article 5 [Voluntary Remediation Program], Article 6 [Declaration of Environmental Use Restriction Fee].

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Dena Kalamchi in the Waste Programs Division at 602-771-5215, or [kalamchi.dena@azdeq.gov](mailto:kalamchi.dena@azdeq.gov), if you have any questions.

Sincerely,

Misael Cabrera, P.E.  
Director

Enclosure

**Main Office**

1110 W. Washington Street • Phoenix, AZ 85007  
(602) 771-2300

**Southern Regional Office**

400 W. Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

[www.azdeq.gov](http://www.azdeq.gov)

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**Arizona Department of Environmental Quality**  
**Five-Year Review Report**  
**Title 18. Environmental Quality**  
**Chapter 7. Department of Environmental Quality Remedial Action**  
**Article 2. Soil Remediation Standards**  
**Article 3. Prospective Purchaser Agreement**  
**Article 5. Voluntary Remediation Program**  
**Article 6. Declaration of Environmental Use Restriction Fee**  
**8/26/2022**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 41-1003 and 49-104(B)(4).

Specific Statutory Authority: A.R.S. §§ 49-104(B)(16), 49-152(A)(1), 49-152(K), 49-152(M), 49-158(G), 49-158(J), 49-179, 49-186, 49-285.01(H), and Laws 2000, Chapter 225, §13.

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R18-7-201	The rule’s objective is to provide definitions necessary for the administration of 18 A.A.C. 7, Article 2.
R18-7-202	The rule describes the extent to which 18 A.A.C. 7, Article 2 is applicable. The rule applies to persons who undertake soil remediation activities; both those who have a legal duty to do so and those who conduct voluntary remediation. The rule also describes the transition from the old standards in Appendix B to the new standards in Appendix A.
R18-7-203	The rule summarizes the objectives that must be met for the remediation of contaminated soil to protect public health and the environment.
R18-7-204	The rule describes how a person may remediate to a background contaminant concentration and how background remediation standards are to be established.
R18-7-205	The rule describes how a person may remediate to residential or non-residential soil remediation levels as appropriate for the use of the property. It also provides further details with respect to the use of the pre-determined standards in Appendices A and B.
R18-7-206	The rule describes how a person may remediate to a residential or non-residential site-specific remediation level as determined by a site-specific human health risk assessment. It also establishes human health risk assessment methodologies and factors to use.
R18-7-207	The rule specifies a site-specific remediation level for nitrate or nitrite contaminated soil.
R18-7-208	The rule lists the circumstances under which a property owner is required to execute and record a Declaration of Environmental Use Restriction (DEUR) and provides the authorizing statute for more complete details.
R18-7-209	The rule describes the procedures for the Department issuing a Letter of Completion, or an alternative closure document for a property.
R18-7-210	The rule’s objective is to inform property owners and persons conducting soil remediation when a Notice of Remediation is required and what the notice is to contain. Additionally, the rule sets forth the requirements for the Department’s soil remediation repository.

Appendix A	The objective of Appendix A is to provide a list of contaminants of concern and the soil clean up levels associated with each. The Appendix provides the predetermined soil remediation levels for several clean up scenarios: residential, non-residential, and residential levels for carcinogens where the property use is a school or facility where children are reasonably expected to be in frequent, repeated contact with the soil (the 10-6 column).
Appendix B	The objective of Appendix B was to preserve the list of contaminants of concern and soil cleanup levels for certain grandfathered sites from the 1997 rules. Sites that were characterized before May 5, 2007 had the option to use Appendix B, and then had three years to meet the 1997 SRLs in Appendix B. After that date, the updated SRLs from Appendix A applied to them.
R18-7-301	The Department may enter into an agreement with the prospective purchaser of a contaminated property who meets certain qualifications. Under the agreement, the Department will provide to the purchaser a written release and a covenant not to sue for existing contamination at the facility. A.R.S. § 49-285.01 allows the Department to charge the prospective purchaser a reasonable fee for the preparation and execution of the agreement. This rule's objective is to establish details and procedures related to the fee.
R18-7-501	The rule provides three definitions necessary for the administration of 18 A.A.C. 7, Article 5.
R18-7-502	The rule establishes an efficient application process and establishes a nonrefundable application fee for the VRP, as required by A.R.S. § 49-179(A), to ensure that the Department recovers the costs of reviewing an application, requesting additional information, determining the applicant's eligibility to participate in the program, and providing other application-related services.
R18-7-503	The rule establishes a efficient process for VRP applicants to pay advance deposits to be applied against the Department's reimbursable costs, as authorized by A.R.S. § 49-179(C).
R18-7-504	The rule implements the provisions of A.R.S. § 49-179 relating to the reimbursement of program costs.
R18-7-505	The rule establishes the hourly rate the Department may charge applicants for certain reimbursable costs and services.
R18-7-506	The rule establishes a efficient method of communicating statements to program participants. The rule implements the provision in A.R.S. § 49-179(C) that requires the Department to provide applicants with documentation supporting its claims for reimbursement consistent with generally accepted accounting principles.
R18-7-507	The rule establishes a efficient method of communicating statements to program participants. The rule identifies the procedure that the Department will use to reconcile the total amount of site-specific reimbursable costs incurred by the Department against the total amount of funds paid by the applicant to determine the final amount due to or from the applicant.
R18-7-601	The rule's objective is to provide definitions necessary for the administration of 18 A.A.C. 7, Article 6.
R18-7-602	The rule describes the extent to which 18 A.A.C. 7, Article 6 is applicable. The rule applies to properties where the owner has elected to use an institutional control and/or an engineering control to reduce the potential for exposure to contaminants on the property, or to leave contamination in place with contaminant levels that are between residential and non-residential soil standards.
R18-7-603	The rule states that a fee must be paid to the Department prior to the property owner recording a DEUR.
R18-7-604	The rule provides a graduated fee schedule and informs property owners how specific costs will be included in calculating the fee for a DEUR.
R18-7-605	The rule's objective is to provide a mechanism for property owners to postpone payment of the portion of the fee to release the DEUR.
R18-7-606	The rule's objective is to clarify that a property owner must pay an additional fee to the Department if the property owner wishes to request a modification to an existing DEUR.

3. **Are the rules effective in achieving their objectives?** Yes X No \_\_

The rules are effective except as indicated below.

Rule	Explanation
R18-7-502	The rule does not allow for ACH or wire transfers and therefore does not effectively meet the rule objective for efficient payment.
R18-7-503	The rule does not allow for ACH or wire transfers and therefore does not effectively meet the rule objective for efficient payment.
R18-7-506	The rule does not allow for emailing of billing statements and therefore does not effectively meet the rule objective for efficient statement communication.
R18-7-507	The rule does not allow for emailing of billing statements and therefore does not effectively meet the rule objective for efficient statement communication.

4. **Are the rules consistent with other rules and statutes?** Yes X No \_\_

5. **Are the rules enforced as written?** Yes X No \_\_

6. **Are the rules clear, concise, and understandable?** Yes X No \_\_

Except as indicated below, the rules are clear, concise, and understandable.

Rule	Explanation
R18-7-201	In the definition of “carcinogen”, there is an outdated link for an EPA guidance document. The correct link is now: <a href="https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf">https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf</a> . The Department plans to update the link in an expedited rulemaking to improve clarity and understandability.
Appendix B	Appendix B has become outdated because no sites exist that were characterized before May 5, 2010 where soil remediation can still be conducted with Appendix B standards. In an expedited rulemaking, ADEQ plans to repeal Appendix B and remove any references thereto in Chapter 7 to improve clarity.
R18-7-301	Subsection (F) requires publication of legal notice but does not describe the manner or location for publication. Language from R18-1-401(A) would otherwise apply here, which describes guidance for when “notice procedures are not otherwise prescribed by statute or rule”: notice shall be published “at least once, in one or more newspapers of general circulation in the county or counties concerned.” To improve rule clarity and understandability, the Department plans to amend the rule in an expedited rulemaking to clarify notice requirements.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No \_\_

Rule	Explanation
R18-7-203(B)	<u>Criticism 1</u> [ <i>summarized, full comment attached</i> ]: The Arizona Chamber of Commerce believes R18-7-203 is inconsistent with A.R.S. § 49-152(C) because it doesn’t expressly require consideration of engineering controls, such as a barrier or cap, to meet standard or site-specific soil remediation standards.  The commenter suggests that the following text is added as 203(B)(4): “An engineering control as defined in A.R.S. § 49-151 shall be taken into consideration when determining whether the contaminants remaining in the soil after remediation meet the requirements of this subsection, so long as a ‘declaration of environmental use restriction’ under A.R.S. § 49-152 is

	<p>recorded in each county where the contaminants and engineering control remain.”</p> <p><u>Response 1:</u> ADEQ appreciates the comment. If the department receives approval from the Governor, the department will work with stakeholders to address this issue in the next rulemaking.</p> <p><u>Criticism 2</u> [<i>summarized, full comment attached</i>]: R18-7-203 does not specify how protection of aquifer water quality should be measured.</p> <p>The commenter suggests that the following text is added as 203(B)(5): “When determining whether soil remediation will cause or threaten to cause a violation of aquifer water quality standards, the Department shall make that determination from the applicable point of compliance for groundwater protection.”</p> <p><u>Response 2:</u> ADEQ appreciates the comment. ADEQ commits to working with this stakeholder and will consider this suggestion in the next rulemaking.</p>
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**8. Economic, small business, and consumer impact comparison:**

**Article 2. Soil Remediation Standards**

ADEQ does not believe that the economic impact of this article has changed substantially from the last Five-Year Review Report. These soil remediation level (SRL) rules were amended by the Department in May 2007. An Economic, Small Business, and Consumer Impact Statement (EIS) was prepared for that rulemaking and is submitted with this report.

The May 2007 EIS for Article 2 was primarily based on two categories of changes made to the SRLs. First, although the same formulas were used to calculate safe levels and allowable risk levels remained the same with one exception, soil levels were updated. For example, residential SRLs were changed for 521 chemicals, some higher some lower. These balanced out so that little extra burden was imposed on the universe of sites to be remediated. ADEQ has determined that for this category, the economic impact has not changed because overall, the type of contaminated sites being subject to the SRLs has not changed. Although, there is much less MTBE contamination now, TCE and PCE contamination remains significant. Then, as now, the impact from the incremental increases and decreases in costs associated with updated SRLs were and are relatively small compared to overall project costs.

The other category of change was a more protective standard required for remediation of sites intended to be used as a school or child care facility. The economic impact of this category was small because so few sites are affected and has not differed significantly from the May 2007 EIS. ADEQ has noted that while the remediation standards have not changed in the last five years, costs have increased. ADEQ staff and other operating costs related to Article 2 have increased since 2007. Fluctuations are caused by the amount of work coming into the Department where the Article 2 rules need to be applied.

**Article 3. Prospective Purchaser Agreement**

This article was amended by the Department and approved by GRRC in March of 2006. An EIS was prepared in conjunction with that rulemaking and is submitted with this report. The primary economic impact of these rules is the cost of a Prospective Purchaser Agreement (PPA). In the last making of the rule, the initial fee was increased from \$900 to \$2500, and the hourly rate was increased from \$30 to \$73 to allow the program to continue. As shown below, applications for a PPA continue at a moderate pace; evidence that property owners continue to exercise the option to obtain a PPA. ADEQ believes that these

fees represent the least burden possible since that was the case when they were enacted and inflation suggests that, if anything, they would go up, an option not studied or thought necessary at this time.

- From 2017 to March 2022 there have been 14 executed PPAs (plus 9 pending approval).
- From 2017 to March 2022 there were 23 PPA applications (6 were Water Quality Assurance Revolving Fund (WQARF) sites).
- The average cost is \$2,500 for WQARF sites and \$3,600 for those that are not on the WQARF registry.

**Article 5. Voluntary Remediation Program**

An EIS was prepared when these rules were adopted and is submitted with this report. The greatest economic benefit of the Voluntary Remediation Program (VRP) is putting contaminated, and perhaps stigmatized, property to beneficial use affording the owner and community financial benefits. Obtaining a no further action (NFA) determination is a great benefit to participants and allows them to return their property to beneficial use or sell at a higher price than if the property was not remediated. The fees required to participate in the VRP program have not changed since 2001. The rules allow small businesses to pay VRP fees under a schedule to minimize the economic impact to small businesses.

- As of March 2022, there are 51 active sites in the VRP.
- From 2017 to March 2022, there was an average of 8 sites added per year.
- Fees collected average about \$350,000 a year over the last five years.

**Article 6. Declaration of Environmental Use Restriction Fee**

The rulemaking for these fee rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under Laws 2000, Chapter 225, § 13. Accordingly, an EIS was not prepared for that rulemaking. The current actual economic, small business and consumer impact is summarized here. ADEQ believes that this Article does not have a substantial economic impact on the state’s economy, small businesses or consumers.

Declaration of Environmental Use Restriction (DEUR) fees typically involve a property owner paying the respective fees, but political subdivisions are also affected. Cities, counties, a university, and the State of Arizona have executed and recorded DEURs under this program. The DEUR is a restrictive covenant that restricts use of a carefully described contaminated area to nonresidential uses to reduce the potential for exposure to the contaminants. It is used if the owner of contaminated property chooses not to remediate the contamination to the safer residential levels and can accept the restriction because the intended use is nonresidential, such as a warehouse or a factory.

It is the owner’s choice to remediate through DEUR or to clean up to residential standards. Therefore, this article is generally used when the benefits exceed the costs. Contaminated property can benefit from a DEUR recorded to allow the owner to remediate to lower standards if higher standards are not necessary.

- From 2017 to 2022, ADEQ approved and recorded 12 DEURs, processed 7 DEUR modifications, and processed 4 DEUR releases.
- The cost to the owner runs from about \$6,000 to a maximum of approximately \$25,000. Almost all of the fees contained in Article 6 are flat fees, except an hourly rate that is listed in the rule.
- From 2017 to March 2022, the DEUR Program has collected \$131,110 in DEUR fees.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes  No
10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

Rule	Explanation
R18-7-201	<u>2017 Proposed Course of Action:</u>

	<p>ADEQ proposes to remove text related to Appendix B from the definition of “soil remediation level” in an expedited rulemaking that will repeal Appendix B and be proposed in 2017.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 7, such as modifying fees in Articles 5 and 6, this subsection would be amended. The Department did not undertake that rulemaking and, thus, did not amend this rule.</p>
R18-7-202	<p><u>2017 Proposed Course of Action:</u> ADEQ proposes to remove text related to Appendix B in R18-7-202(E) in an expedited rulemaking that will repeal Appendix B and be proposed in 2017.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 7, such as modifying fees in Articles 5 and 6, this subsection would be amended. The Department did not undertake that rulemaking and, thus, did not amend this rule.</p>
R18-7-205	<p><u>2017 Proposed Course of Action:</u> ADEQ proposes to remove the reference to Appendix B from subsection (A) of this rule in an expedited rulemaking that will repeal Appendix B and be proposed in 2017.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 7, such as modifying fees in Articles 5 and 6, this subsection would be amended. The Department did not undertake that rulemaking and, thus, did not amend this rule.</p>
Appendix B	<p><u>2017 Proposed Course of Action:</u> ADEQ believes that Appendix B has become outdated because no sites exist that were characterized before May 5, 2007 where soil remediation can still be conducted with Appendix B standards. ADEQ plans to propose an expedited rulemaking to repeal Appendix B and amend text in 3 other Sections in Article 2 where reference is made to Appendix B (R18-7-201, 202, and 205). If the department receives approval from the Governor to adopt permanent fee rules in Articles 5 and 6, ADEQ will repeal Appendix B in that rulemaking.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated Appendix B would be repealed if any material changes were made to 18 A.A.C. 7. The Department did not undertake this rulemaking yet because it is not a substantive change that warranted a separate rulemaking.</p>
R18-7-301	<p><u>2017 Proposed Course of Action:</u> If the department receives approval from the Governor to adopt permanent fee rules in Articles 5 and 6 of 18 A.A.C. 7, the department will clarify the publication requirement described below:</p> <p>The Department has analyzed the clarity, conciseness, and understandability of this rule. Subsection (F) requires the department to publish a legal notice. It appears that only a single publication is required but there is no indication of where the notice should be published. A department rule in 18 A.A.C. 1 provides some guidance by stating that when “notice procedures are not otherwise prescribed by statute or rule” notice shall be published “at least once, in one or more newspapers of general circulation in the county or counties concerned”. (R18-1-401(A)) This language could</p>

	<p>be inserted in R18-7-301. Other than this, the rule in 18 A.A.C. 7, Article 3 is clear, concise, and understandable.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 7, such as modifying fees in Articles 5 and 6, this subsection would be amended. The Department did not have any necessary substantive changes and, thus, did not undertake a rulemaking for this chapter.</p>
<p>R18-7-501 R18-7-502 R18-7-503 R18-7-504 R18-7-505 R18-7-506 R18-7-507</p>	<p><u>2017 Proposed Course of Action:</u> In the last 5-year review report, ADEQ believed it would have the resources to propose permanent fee rules by December 2013, but that it would have to evaluate the current fees in order to request an exemption from the Governor’s Office. Due to other rulemaking priorities, ADEQ has not evaluated the current fees or requested an exemption for this rulemaking as of June, 2017. However, ADEQ has begun soliciting suggestions from customers in preparation for a VRP fee rulemaking it expects to submit to GRRC in October, 2019.</p> <p>Although the Article 5 interim fee rules are working effectively, the Department believes its recent emphasis on simplicity and waste reduction make this a good time to update these rules. ADEQ will be submitting a request for a rule making exception to the Governor in time for a rulemaking to be submitted to GRRC in October, 2019. It should be noted that as part of the information needed to make a request to the Governor for a permanent fee rulemaking, ADEQ must determine whether to propose increasing, decreasing, or keeping the fees the same. It is uncertain whether an exemption under the current rulemaking moratorium would apply to the rule unless the fees or administrative burden decreased.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> ADEQ has evaluated the current fee structure and does not believe a change is necessary at this time as there were no notable issues with fees from the past five years and the Department believes the current fee structure is effective as is. The Department will amend the rules to add electronic payment options in a rulemaking but does not believe a fee structure change is necessary anymore.</p>
<p>R18-7-601 R18-7-602 R18-7-603 R18-7-604 R18-7-605 R18-7-606</p>	<p><u>2017 Proposed Course of Action:</u> Although the Article 6 interim fee rules are working effectively, the Department believes its recent emphasis on simplicity and waste reduction make this a good time to update these rules. ADEQ will be submitting a request for a rule making exception to the Governor in time for a rulemaking to be submitted to GRRC in October, 2019. It should be noted that as part of the information needed to make a request to the Governor for a permanent fee rulemaking, ADEQ must determine whether to propose increasing, decreasing, or keeping the fees the same. It is uncertain whether an exemption under the current rulemaking moratorium would apply to the rule unless the fees or administrative burden decreased.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> ADEQ has evaluated the current fee structure and does not believe a change is necessary at this time as there were no notable issues with fees from the past five years and the Department believes the current fee structure is effective as is. The Department will amend the rules to add electronic payment options in a rulemaking but does not believe a fee structure change is necessary anymore.</p>

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Article	Analysis
<p><b>Article 2</b></p>	<p>The costs of Soil Remediation Standards in Article 2 include costs required to remediate a site to safe soil standards. The exact cost varies greatly depending on the site, but it is the choice of the person remediating to meet one of up to five standards (background, a choice of residential or non-residential predetermined standards, or site-specific risk assessment at either residential or non-residential levels). This gives maximum control to impacted entities to choose the lowest possible cost for the intended use of the property while attaining the regulatory objective of clean soil. The benefits include reduced adverse health effects, and uniform standards that apply equally to large and small facilities.</p> <p>ADEQ believes the benefits of protecting public health and the environment by remediating hazardous contamination is a state priority and outweighs the remediation cost to site owners. This article grants site owners control over how they wish to remediate in an effort to minimize the cost and maximize the environmental benefit.</p>
<p><b>Article 3</b></p>	<p>The costs of Article 3 include the fee for a prospective purchaser agreement. The prospective purchaser bears the cost but participation is voluntary. There is also an option to “pay as you go” and withdraw the prospective purchaser agreement request without incurring more charges. The benefits of receiving a prospective purchaser agreement include a written covenant not to sue or hold a prospective purchaser liable for existing contamination under WQARF or CERCLA which can cost several millions of dollars. Another added benefit is returning land to its beneficial use by allowing the sale of property without the purchaser having to worry about future liabilities. Applications for a PPA continue at a moderate pace, evidence that property owners have continued to exercise the option to obtain a PPA. ADEQ believes that these fees still represent the least burden possible since that was demonstrated when they were enacted and inflation suggests that, if anything, the costs and fees would go up, an option not studied or thought necessary at this time.</p> <p>The Department assumes that the prospective purchaser has weighed the upfront costs with the estimated benefits and decided that the benefits exceed the costs. ADEQ believes the benefit of this article outweighs any cost on the applicant while providing an option to return land to beneficial use while addressing health and environmental hazards.</p>
<p><b>Article 5</b></p>	<p>The costs of Article 5 include the VRP application fee and the time required to file and process the application. The costs include a \$2,000 nonrefundable application fee (nonrefundable by statute) and a deposit of \$4,000. The department may request additional deposits in amounts not to exceed \$4,000 to fund work performed at the rate of \$110/hr. These small deposits allow the department to accommodate small owners by allowing for more manageable fee amounts over smaller time intervals. The benefit of Article 5 is the opportunity to receive a no further action (NFA) determination while managing your own cleanup. ADEQ believes that these fees still represent the least burden possible since that was demonstrated when they were enacted and inflation suggests that, if anything, the costs and fees would go up, an option not studied or thought necessary at this time.</p> <p>Due to the voluntary nature of this program and high participation rate, ADEQ believes that the benefits of ADEQ oversight combined with an NFA determination are greater than their costs. ADEQ currently believes these rules impose the least burden and cost on the regulated community consistent with the objective of this self-funded program to incentivize owners to remediate.</p>

<b>Article 6</b>	<p>The costs of Article 6 include Declaration of Environmental Use Restriction (DEUR) fees. The DEUR fee rules in this Article impose the least burden and cost necessary to achieve the objective of reducing the potential for exposure to contaminants on the property. The fee calculations were based on department costs from 2003 and earlier. Postponement of a portion of the fee related to release of the DEUR is also a burden-reducing feature. Accepting a use restriction or engineering control on a property may affect the intended use of the property only minimally, but may save significantly on remediation expense and time. The benefit of a DEUR on property allows the owner to pause or halt cleanup of the parcel at a point that is still above residential standards but is adequate for the owner’s non-residential plans for the property. Furthermore, site owners may apply to modify the DEUR if they wish to remediate to a residential standard. ADEQ believes that the fees represent the least burden possible since that was demonstrated when they were enacted and inflation suggests that, if anything, the costs and fees would go up, an option not studied or thought necessary at this time.</p> <p>The fee costs or restriction is minimal compared to the amount the regulated community saves by halting remediation. This article allows a good balance between remediating to safe standards while not hindering site owners financially. Due to the voluntary nature of this “attachment” to property rights, ADEQ believes that DEURs have been shown to have benefits greater than their costs.</p>
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12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

These rules relate to the state VRP and WQARF programs and therefore there is no corresponding federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules were adopted before July 29, 2010.

14. **Proposed course of action**

Contingent upon the approval of Governor’s Office, ADEQ anticipates conducting a rulemaking to address the course of action outlined in the table below. The Department anticipates submitting the rulemaking to GRRC by July 2023. The Department also commits to work with stakeholders to understand written criticisms in Section 7 and will consider these changes in the rulemaking.

Rule	Potential Amendment
R18-7-201	<p>The text in the “soil remediation level” definition related to Appendix B could be removed if Appendix B is repealed.</p> <p>The EPA guidance document link is no longer active and the link should be updated to the one below so the regulated community can find it.  <a href="https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf">https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf</a></p>
R18-7-202	Remove text related to Appendix B in 202(E) and (G) as no sites exist that use Appendix B and it will be repealed.
R18-7-203 (B)	The department will work with stakeholders to identify in rule how and under what circumstances engineering controls, such as a barrier or cap, should be considered to meet a site-specific soil remediation standard.

<b>Rule</b>	<b>Potential Amendment</b>
R18-7-205(A)	Remove reference to Appendix B as no VRP sites exist that use Appendix B and Appendix B will be repealed.
Appendix B	Repeal and remove Appendix B. This Appendix has become outdated because no existing sites were characterized before May 5, 2010 where soil remediation can still be conducted with Appendix B standards.
R18-7-301	Subsection (F) requires publication of legal notice but does not describe the location for the publication. Language can be added to specify.
R18-7-502	Add ACH and wire transfers as options for fee submittal to modernize the requirement and meet the rule objective.
R18-7-503	Add ACH and wire transfers as options for fee submittal to modernize the requirement and meet the rule objective.
R18-7-506	Add email option for statement communication to modernize the requirement and meet the rule objective.
R18-7-507	Add email option for statement communication to modernize the requirement and meet the rule objective.

**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 7. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**REMEDIAL ACTION**

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (01-4).*

*Editor's Note: The proposed summary action amending the heading of Chapter 7 was remanded by the Governor's Regulatory Review Council (August 4, 1999), which revoked the interim effectiveness of the change as of January 22, 1999. The heading of Chapter 7 before the proposed summary action has been restored (Supp. 99-3).*

*Editor's Note: Chapter 7 heading repealed; new heading adopted; both by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4).*

*Editor's Note: At the request of the Department of Environmental Quality, interim rules removed in Articles 1 & 2 (Supp. 97-3) by the emergency expiring were reinstated. The Department determined these emergency rules were in effect until permanent rules were adopted pursuant to Laws 1995, Ch. 232, § 5, and Laws 1996, Chapter 151, § 9. Under these Laws the Department was required to "adopt risk based remediation standards formally by rule pursuant to A.R.S. § 49-152(A) ... no later than August 1, 1997."; and the "interim standards adopted pursuant to A.R.S. § 49-152(A)(1)(a) and (b) ... as emergency rules shall remain in effect until the formally established rules are adopted." The interim rules have not been reprinted because permanent final rules have now been filed. Refer to Supp. 97-1 for interim emergency rules (Supp. 97-4).*

*Editor's Note: A Section of this Chapter was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1997, Ch. 296, §§ 3(E) and (G), (10) and (11). Although exempt from certain provisions of the rule-making process, the Department was required to submit notice of proposed rulemaking with the Secretary of State for publication in the Arizona Administrative Register and conduct a public hearing (Supp. 97-3).*

*Editor's Note: Some Sections of Chapter 7 were exempt from the rulemaking process (Laws 1995, Ch. 232, § 5). However the Department was required to provide a notice of hearing and public hearing before adoption of the emergency rules. The emergency rules were approved by the Attorney General (Supp. 96-1). Editor's note added to clarify exemptions of emergency adoptions (Supp. 97-1).*

**ARTICLE 1. EXPIRED**

*Article 1, consisting of Section R18-7-110, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4298, effective August 31, 2002 (Supp. 02-3).*

*The proposed summary action renumbering Section R18-7-110 to R18-7-101 was remanded by the Governor's Regulatory Review Council (August 4, 1999), which revoked the interim effectiveness of the changes as of January 22, 1999. The numbering of Article 1 before the proposed summary action has been restored (Supp. 99-3).*

*Article 1, consisting of Sections R18-7-101 thru R18-7-109 repealed; R18-7-110 renumbered to R18-7-101; both by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4).*

*Article 1 consisting of Sections R18-7-101 through R18-7-110 adopted as permanent rules effective December 22, 1987.*

*Article 1 consisting of Sections R18-7-101 through R18-7-110 adopted as an emergency effective September 17, 1987 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

*Article 1 consisting of Sections R18-7-101 through R18-7-110 adopted as an emergency effective June 17, 1987 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

*Article 1 consisting of Sections R9-20-102, R9-20-104 through R9-20-106 and R9-20-111 adopted as an emergency effective March 6, 1987 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

*Article 1 consisting of Sections R9-20-102, R9-20-104 through R9-20-106 and R9-20-111 adopted as an emergency effective December 5, 1986 pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency expired.*

Section  
R18-7-101. Repealed  
R18-7-102. Repealed

R18-7-103. Repealed  
R18-7-104. Repealed  
R18-7-105. Repealed  
R18-7-106. Repealed  
R18-7-107. Repealed  
R18-7-108. Repealed  
R18-7-109. Repealed  
R18-7-110. Expired

**ARTICLE 2. SOIL REMEDIATION STANDARDS**

*Article 2, consisting of interim Sections R18-7-201 through R18-7-209 and Appendices A through C, replaced by new permanent Sections, adopted effective December 4, 1997. Appendix D emergency expired (Supp. 97-4).*

*Article 2, consisting of Sections R18-7-201 through R18-7-209 and Appendices A through D, removed in Supp. 97-3 reinstated at the request of the Department. Refer to Supp. 97-1 for interim rules. Introduction stating the emergency expired has been removed for clarity (Supp. 97-4).*

*Article introduction revised below to clarify exemptions of emergency adoption (Supp. 97-1).*

*Article 2, consisting of Sections R18-7-201 through R18-7-209 and Appendices A through D, adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5. The Sections are in effect until permanent rules are adopted and in place by August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1).*

Section  
R18-7-201. Definitions  
R18-7-202. Applicability  
R18-7-203. Remediation Standards  
R18-7-204. Background Remediation Standards  
R18-7-205. Pre-determined Remediation Standards  
R18-7-206. Site-specific Remediation Standards  
R18-7-207. Site-specific Remediation Standards for Nitrates and Nitrites

- R18-7-208. Declaration of Environmental Use Restriction (DEUR)  
 R18-7-209. Letter of Completion or Alternative Closure Document  
 R18-7-210. Notice of Remediation and Repository  
 Appendix A. Soil Remediation Levels (SRLs)  
 Appendix B. 1997 Soil Remediation Levels (SRLs)  
 Appendix C. Repealed  
 Appendix D. Emergency Expired

### ARTICLE 3. PROSPECTIVE PURCHASER AGREEMENT

*Article 3, consisting of Section R18-7-301, adopted effective January 14, 1997 (Supp. 97-1).*

#### Section

- R18-7-301. Prospective Purchaser Agreement Fee

### ARTICLE 4. REPEALED

*Article 4, consisting of Section R18-7-401, repealed by final rulemaking at 15 A.A.R. 232, effective March 7, 2009 (Supp. 09-1).*

*Article 4, consisting of Section R18-7-401, repealed. New Article 4, consisting of Section R18-7-401, adopted effective October 21, 1998 (Supp. 98-1).*

*Article 4, consisting of Section R18-7-401, adopted under an exemption from A.R.S. Title 41, Chapter 6 effective August 5, 1997 (Supp. 97-3).*

#### Section

- R18-7-401. Repealed

### ARTICLE 5. VOLUNTARY REMEDIATION PROGRAM

*Article 5, consisting of Sections R18-7-501 through R18-7-507, adopted by exempt rulemaking at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).*

#### Section

- R18-7-501. Definitions  
 R18-7-502. Application Fee  
 R18-7-503. Deposit  
 R18-7-504. Voluntary Remediation Program Reimbursement  
 R18-7-505. Hourly Reimbursement Rate  
 R18-7-506. Voluntary Remediation Program Accounting  
 R18-7-507. Account Reconciliation

### ARTICLE 6. DECLARATION OF ENVIRONMENTAL USE RESTRICTION FEE

*Article 6, consisting of R18-7-601 through R18-7-606, made by exempt rulemaking at 10 A.A.R. 573, effective February 20, 2004 (Supp. 04-1).*

#### Section

- R18-7-601. Definitions  
 R18-7-602. Applicability  
 R18-7-603. Fee  
 R18-7-604. Fee Calculation  
 R18-7-605. Postponement of the Release Portion of the DEUR Fee  
 R18-7-606. DEUR Modification Fee

### ARTICLE 1. EXPIRED

*Article 1, consisting of Section R18-7-110, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4298, effective August 31, 2002 (Supp. 02-3).*

### R18-7-101. Repealed

#### Historical Note

Adopted as an emergency effective December 5, 1986,

pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Emergency expired. Adopted, without change, as an emergency effective March 6, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Former Section R9-20-102 was renumbered as Section R18-7-101, amended and readopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-101 repealed; new Section renumbered from R18-7-110; both by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Summary renumbering action revoked; former numbering of Sections R18-7-101 and R18-7-110 restored effective January 22, 1999. Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

### R18-7-102. Repealed

#### Historical Note

Adopted as an emergency effective December 5, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Emergency expired. Amended and adopted as an emergency effective March 6, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Former Section R9-20-104 was renumbered as Section R18-7-102, amended and readopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-102 repealed by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

### R18-7-103. Repealed

#### Historical Note

Adopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-103 repealed by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

### R18-7-104. Repealed

#### Historical Note

Adopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-

2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-104 repealed by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

**R18-7-105. Repealed****Historical Note**

Adopted as an emergency effective December 5, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Emergency expired. Amended and adopted as an emergency effective March 6, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Former Section R9-20-105 was renumbered as Section R18-7-105, amended and readopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-105 repealed by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

**R18-7-106. Repealed****Historical Note**

Adopted as an emergency effective December 5, 1986, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 86-6). Emergency expired. Amended and adopted as an emergency effective March 6, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Former Section R9-20-106 was renumbered as Section R18-7-106, amended and readopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-106 repealed by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

**R18-7-107. Repealed****Historical Note**

Adopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3).

Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-107 repealed by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

**R18-7-108. Repealed****Historical Note**

Adopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-108 repealed by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

*Editor's Note: Emergency amendment R18-7-109, removed in Supp. 97-3, was reinstated at the request of the Department. Refer to Supp. 97-1 for emergency rule. This Section was subsequently amended under the regular rulemaking process effective (Supp. 97-4). This Section was repealed by summary action (Supp. 98-4).*

**R18-7-109. Repealed****Historical Note**

Adopted as an emergency effective December 6, 1986, pursuant to A.R.S. § 41-1003 valid for only 90 days. Emergency expired. Amended and adopted as an emergency effective March 6, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Former Section R9-20-111 was renumbered as Section R18-7-109, amended and readopted as an emergency effective June 18, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). Section amended by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Amendment adopted permanently effective December 4, 1997 (Supp. 97-4). R18-7-109 repealed by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Adopted summary rules filed August 10, 1999; interim effective date of January 22, 1999 now the permanent effective date (Supp. 99-3).

**R18-7-110. Expired****Historical Note**

Adopted as an emergency effective June 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-2). Emergency expired. Readopted without change as an emergency effective September 17, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-3). Emergency expired. Amended and adopted as a permanent rule effective December 22, 1987 (Supp. 87-4). R18-7-110 renumbered by summary action with an interim effective date of January 22, 1999; filed in the Office of the Secretary of State December 29, 1998 (Supp. 98-4). Summary renumbering action revoked; former numbering of Sections R18-7-101 and R18-7-110 restored effective January 22, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4298, effective August 31, 2002 (Supp. 02-3).

*Editor's Note: Emergency adopted Article 2 removed in Supp. 97-3, was reinstated at the request of the Department. Refer to Supp. 97-1 for emergency Sections. New Sections were subsequently adopted under the regular rulemaking process (Supp. 97-4).*

**ARTICLE 2. SOIL REMEDIATION STANDARDS****R18-7-201. Definitions**

In addition to the definitions provided in A.R.S. §§ 49-151 and 49-152, the following definitions apply in this Article:

1. "Aquifer Protection Permit Program" means the system of requirements prescribed in A.R.S. Title 49, Chapter 2, Article 3 and A.A.C. Title 18, Chapter 9, Articles 1 through 7.
2. "Background" means a concentration of a naturally occurring contaminant in soils.
3. "Carcinogen" or "carcinogenic" means the potential of a contaminant to cause cancer in humans as determined by lines of evidence in accordance with a narrative classification in "Guidelines for Carcinogen Risk Assessment", EPA/630/P-03/001F, March 2005, (and no future editions), which is incorporated by reference. "Guidelines for Carcinogen Risk Assessment" is available from ADEQ and at <http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=116283>.
4. "Child care facility" means any permanent facility on a property or portion of property in which care or supervision is provided for children below the age of 18, unaccompanied by a parent or guardian, for periods of less than 24 hours per day. Child care facility does not include private homes or facilities that care for fewer than five children.
5. "Contact" means exposure to a contaminant through ingestion, inhalation, or dermal absorption.
6. "Contaminant" means a substance regulated by the programs listed in R18-7-202(A) or R18-7-202(B) or defined in A.R.S. § 49-171(2).
7. "Department" means the Arizona Department of Environmental Quality.
8. "Deterministic risk assessment methodology" means a site-specific human health risk assessment, performed using a specific set of input variables, exposure assumptions, and toxicity criteria, represented by point estimates for each receptor evaluated, which results in a point estimate of risk.
9. "Declaration of Environmental Use Restriction" or "DEUR" means a restrictive covenant as described in A.R.S. § 49-152.

10. "Ecological community" means an assemblage of populations of different species within a specified location in space and time.
11. "Ecological receptor" means a specific ecological community, population, or individual organism, protected by federal or state laws and regulations, or a local population that provides an important natural or economic resource, function, and value.
12. "Ecological risk assessment" means a scientific evaluation of the probability of an adverse effect to ecological receptors from exposure to specific types and concentrations of contaminants. An ecological risk assessment contains four components: identification of potential contaminants; an exposure assessment; a toxicity assessment; and a risk characterization.
13. "Engineering control" means a remediation method, such as a barrier or cap, which is used to prevent or minimize exposure to contaminants, and includes technologies that reduce the mobility or migration of contaminants.
14. "Excess lifetime cancer risk" means the increased risk of developing cancer above the background cancer occurrence levels due to exposure to contaminants.
15. "Exposure" means contact between contaminants and organisms.
16. "Exposure pathway" means the course a contaminant takes from a source to an exposed organism. Each exposure pathway includes a source or release from a source, an exposure point, and an exposure route. If the exposure point differs from the source, transport/exposure media (that is, air, water) are also included.
17. "Exposure point" means a location of potential contact between a contaminant and an organism.
18. "Exposure route" means the way a contaminant comes into contact with an organism (that is, by ingestion, inhalation, or dermal contact).
19. "Groundwater" means water in an aquifer as defined in A.R.S. § 49-201(2).
20. "Hazard Index" means the sum of hazard quotients for multiple substances and/or multiple exposure pathways, or the sum of hazard quotients for chemicals acting by a similar mechanism and/or having the same target organ.
21. "Hazardous Waste Management Program" means the system of requirements prescribed in A.R.S. Title 49, Ch. 5, Article 2 and 18 A.A.C. 8, Article 2.
22. "Hazard quotient" means the value which quantifies non-carcinogenic risk for one chemical for one receptor population for one exposure pathway over a specified exposure period. The hazard quotient is equal to the ratio of a chemical-specific intake to the reference dose.
23. "Imminent and substantial endangerment to the public health or the environment" has the meaning found in A.R.S. § 49-282.02(C)(1).
24. "Institutional control" means a legal or administrative tool or action taken to reduce the potential for exposure to contaminants.
25. "Letter of Completion" means a Departmental statement that indicates whether the property in question has met the soil remediation standards in this Article.
26. "Migrate" or "migration" means the movement of contaminants from the point of release, emission, discharge, or spillage: through the soil profile; by volatilization from soil to air and subsequent dispersion to air; and by water, wind, or other mechanisms.
27. "Non-carcinogen" means a contaminant that has the potential upon exposure to an individual to cause adverse health effects other than cancer.

28. “Non-residential site-specific remediation level” means a level of contaminants remaining in soil after remediation that results in a cumulative excess lifetime cancer risk between  $1 \times 10^{-6}$  and  $1 \times 10^{-4}$  and a Hazard Index no greater than 1 based on non-residential exposure assumptions.
29. “Nuisance” means the activities or conditions that may be subject to A.R.S. § 49-141.
30. “Person” means any public or private corporation, company, partnership, firm, association, or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns, municipal corporations, as well as a natural person.
31. “Population” means an aggregate of individuals of a species within a specified location in space and time.
32. “Probabilistic risk assessment methodology” means a site-specific human health risk assessment, performed using probability distributions of input variables and exposure assumptions that take into account the variability and uncertainty of these values, which results in a range or distribution of possible risk estimates.
33. “Reasonable Maximum Exposure” or “RME” means the highest human exposure case that is greater than the average, but is still within the range of possible exposures to humans at a site.
34. “Remediate” or “remediation” has the meaning found in A.R.S. § 49-151.
35. “Reference dose” means the toxicity factor expressed as a threshold level in units of (mg/kg-day) at which non-cancer effects are not expected to occur.
36. “Repository” means the Department’s database, established under A.R.S. § 49-152(E), from which the public may view information pertaining to remediation projects.
37. “Residential site-specific remediation level” means a level of contaminants remaining in the soil after remediation that results in a cumulative excess lifetime cancer risk between  $1 \times 10^{-6}$  and  $1 \times 10^{-4}$  and a Hazard Index no greater than 1 based on residential exposure assumptions.
38. “Residential use” has the meaning found in A.R.S. § 49-151.
39. “School” means any public institution under the jurisdiction of the Arizona State Board of Education or the Arizona State Board for Charter Schools, or any non-public institution, established for the purposes of offering instruction to children attending any grade from preschool through grade 12.
40. “Site-specific human health risk assessment” means a scientific evaluation of the probability of an adverse effect to human health from exposure to specific types and concentrations of contaminants. A site-specific human health risk assessment contains four components: identification of potential contaminants; an exposure assessment; a toxicity assessment; and a risk characterization.
41. “Soil” means all earthen materials, including moisture and pore space contained within earthen material, located between the land surface and groundwater including sediments and unconsolidated accumulations produced by the physical and chemical disintegration of rocks.
42. “Soil remediation level” or “SRL” means a pre-determined risk-based standard based upon the total contaminant concentration in soil, developed pursuant to A.R.S. § 49-152(A)(1) and listed in Appendix A or, as applicable, in Appendix B.
43. “Solid Waste Management Program” means the system of requirements prescribed in A.R.S. Title 49, Ch. 4, and the rules adopted under those statutes.
44. “Special Waste Management Program” means the system of requirements prescribed in A.R.S. Title 49, Ch. 4, Article 9 and 18 A.A.C. 13, Articles 13 and 16.
45. “Underground Storage Tank Program” or “UST Program” means the system of requirements prescribed in A.R.S. Title 49, Ch. 6, Article 1 and 18 A.A.C. 12.
46. “Water Quality Assurance Revolving Fund” or “WQARF” means the system of requirements prescribed in A.R.S. Title 49, Ch. 2, Article 5 and 18 A.A.C. 16.

#### Historical Note

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-201 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

#### R18-7-202. Applicability

- A.** This Article applies to a person legally required to conduct soil remediation by any of the following regulatory programs administered by the Department:
1. The Aquifer Protection Permit Program.
  2. The Hazardous Waste Management Program.
  3. The Solid Waste Management Program.
  4. The Special Waste Management Program.
  5. The Underground Storage Tank Program.
  6. The Water Quality Assurance Revolving Fund.
  7. Any other program under A.R.S. Title 49 that regulates soil remediation.
- B.** This Article also applies to a person who is not legally required to conduct soil remediation, but who chooses to do so under any program administered by the Department.
- C.** The requirements of this Article apply in addition to any specific requirements of the programs described in subsections (A) or (B).
- D.** This Article is limited to soil remediation.
- E.** A person who is remediating a site shall comply with the numeric soil remediation standards identified in either Appendix A or Appendix B if both of the following conditions are met. If either subsection (1) or subsection (2) is not met, a person who is remediating a site shall comply with the numeric soil remediation standards identified in Appendix A.
1. The site was characterized before May 5, 2007. A site is considered characterized when the laboratory analytical results of the soil samples delineating the nature, degree, and extent of soil contamination have been received by the person conducting the remediation.
  2. The site was remediated or a risk assessment completed before May 5, 2010. A risk assessment or remediation is considered completed when site closure, that meets the conditions in R18-7-209, has been requested.
- F.** Nothing in this Article limits the Department’s authority to establish more stringent soil remediation levels in response to:
1. A nuisance.
  2. An imminent and substantial endangerment to the public health or the environment.

**G.** This Article does not apply to persons remediating soil to numeric soil remediation levels specified in the following documents and entered into, issued, or approved before May 5, 2007:

1. Orders of the Director;
2. Orders of any Court;
3. Work agreements approved by the Director pursuant to A.R.S. § 49-282.05;
4. Closure plans approved by the Director pursuant to R18-8-265;
5. Post-closure permits approved by the Director pursuant to R18-8-270;
6. Records of Decision approved by the Director pursuant to R18-16-410;
7. Records of Decision approved by the Director pursuant to R18-16-413; and
8. Records of Decision approved by the Director pursuant to 40 CFR 300.430(f)(5).

#### Historical Note

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-202 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

#### R18-7-203. Remediation Standards

- A.** A person subject to this Article shall remediate soil so that any concentration of contaminants remaining in the soil after remediation is less than or equal to one of the following:
1. The background remediation standards prescribed in R18-7-204.
  2. The pre-determined remediation standards prescribed in R18-7-205.
  3. The site-specific remediation standards prescribed in R18-7-206.
- B.** A person who conducts a soil remediation based on the standards in R18-7-205, R18-7-206, R18-7-207 shall remediate soil so that any concentration of contaminants remaining in the soil after remediation does not:
1. Cause or threaten to cause a violation of Water Quality Standards prescribed in 18 A.A.C. 11. If the remediation level for a contaminant in the soil is not protective of aquifer water quality and surface water quality, the person shall remediate soil to an alternative soil remediation level that is protective of aquifer water quality and surface water quality.
  2. Exhibit a hazardous waste characteristic of ignitability, corrosivity, or reactivity as defined in R18-8-261(A). If the remediation level for a contaminant in the soil results in leaving soils that exhibit a hazardous waste characteristic other than toxicity, the person shall remediate soil to an alternative soil remediation level such that the soil does not exhibit a hazardous waste characteristic other than toxicity.
  3. Cause or threaten to cause an adverse impact to ecological receptors. If the Department determines that the remediation level for a contaminant in soil may impact ecological receptors based on the existence of ecological

receptors and complete exposure pathways, the person shall conduct an ecological risk assessment. If the ecological risk assessment indicates that any concentration of contaminants remaining in the soil after remediation causes or threatens to cause an adverse impact to ecological receptors, the person shall remediate soil to an alternative soil remediation level, derived from the ecological risk assessment, that is protective of ecological receptors.

- C.** Soil vapor concentration may be used to estimate the total contaminant concentration in soil if the Department determines that the soil vapor concentration methodology will not be invalidated by the soil, hydrogeology, or other characteristics of the site.

#### Historical Note

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 59; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-203 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

#### R18-7-204. Background Remediation Standards

- A.** A person may elect to remediate to a background concentration for a contaminant.
- B.** A person who conducts a remediation to a background concentration for a contaminant shall establish the background concentration using all of the following factors:
1. Site-specific historical information concerning land use.
  2. Site-specific sampling of soils unaffected by a release, but having characteristics similar to those of the soils affected by the release.
  3. Statistical analysis of background concentrations using the 95th percentile upper confidence limit.

#### Historical Note

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-204 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

#### R18-7-205. Pre-determined Remediation Standards

- A.** A person may elect to remediate to the residential or non-residential soil remediation levels (SRLs) in Appendix A. If allowed under R18-7-202(E), a person may also elect to remediate to the residential or non-residential SRLs in Appendix B.
- B.** A person who conducts remediation pursuant to this Article shall remediate to the residential SRL on any property where there is residential use at the time remediation is completed.
- C.** A pre-determined contaminant standard established by federal law or regulation may be used for polychlorinated biphenyl cleanups regulated pursuant to the Toxic Substances Control

Act (TSCA) at 40 CFR 761.120 et seq., however, the Department has no regulatory authority to issue a Letter of Completion in TSCA-regulated cleanups.

- D. A person who elects to utilize a residential or non-residential SRL for the following known human carcinogens shall remediate to a  $1 \times 10^{-6}$  excess lifetime cancer risk: benzene, benzidine, bis (chloromethyl) ether, chromium VI, diethylstilbestrol, direct black 38, direct blue 6, direct brown 95, nickel subsulfide, and vinyl chloride.
- E. Except as provided below, a person who elects to remediate to a residential SRL may utilize a  $1 \times 10^{-5}$  excess lifetime cancer risk for any carcinogen other than a known human carcinogen. If the current or currently intended future use of the contaminated site is a child care facility or school where children below the age of 18 are reasonably expected to be in frequent, repeated contact with the soil, the person conducting remediation shall remediate to a  $1 \times 10^{-6}$  excess lifetime cancer risk.
- F. For contaminants that exhibit both carcinogenic and non-carcinogenic effects, the numeric standard that is lower (more protective) shall apply.

#### Historical Note

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-205 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

#### R18-7-206. Site-specific Remediation Standards

- A. A person may elect to remediate to a residential or a non-residential site-specific remediation level derived from a site-specific human health risk assessment.
- B. A person who conducts a remediation to a residential or a non-residential site-specific remediation level shall use one of the following site-specific human health risk assessment methodologies:
  1. A deterministic methodology. If a deterministic methodology is used, reasonable maximum exposures shall be evaluated for future use scenarios.
  2. A probabilistic methodology. If a probabilistic methodology is used, it shall be no less protective than the 95th percentile upper bound estimate of the distribution.
  3. An alternative methodology commonly accepted in the scientific community. An alternative methodology is considered accepted in the scientific community if it is published in peer-reviewed literature, such as a professional journal or publication of standards of general circulation, and there is general consensus within the scientific community that the methodology is sound.
- C. A person who conducts a remediation to a site-specific remediation level shall remediate to the residential site-specific remediation level on any property where there is residential use at the time remediation is completed.
- D. A person conducting a remediation to a residential or a non-residential site-specific remediation level shall remediate the contaminants in soil to a Hazard Index no greater than 1 and a cumulative excess lifetime cancer risk from  $1 \times 10^{-6}$  to  $1 \times 10^{-4}$ . The following site-specific factors shall be evaluated when determining the cumulative excess lifetime cancer risk:

1. The presence of multiple contaminants.
2. The existence of multiple pathways of exposure.
3. The uncertainty of exposure.
4. The sensitivity of the exposed population.
5. Other program-related laws and regulations that may apply.

#### Historical Note

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-206 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

#### R18-7-207. Site-specific Remediation Standards for Nitrates and Nitrites

A person who conducts remediation of nitrates or nitrites shall remediate to a site-specific remediation level pursuant to R18-7-203(B)(1), (2), and (3).

#### Historical Note

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-207 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Section repealed; new Section made by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

#### R18-7-208. Declaration of Environmental Use Restriction (DEUR)

A property owner who elects to leave contamination on a property that exceeds the applicable residential standard for the property under R18-7-205 or R18-7-206, or elects to use an institutional control or an engineering control to meet the requirements of R18-7-205, R18-7-206, or R18-7-207, shall record a DEUR pursuant to A.R.S. § 49-152 and comply with the related provisions of that statute and applicable rules.

#### Historical Note

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-208 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Former R18-7-208 renumbered to R18-7-209; new R18-7-208 made by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

**R18-7-209. Letter of Completion or Alternative Closure Document**

- A.** If a person requests a Letter of Completion or an alternative closure document, a person shall submit, at a minimum, the following information to the applicable Departmental program listed in R18-7-202(A) or described in R18-7-202(B):
1. A description of the actual activities, techniques, and technologies used to remediate soil at the site, including the legal mechanism in place to ensure that any institutional and engineering controls are maintained.
  2. Documentation that requirements prescribed in R18-7-203(A) and R18-7-203(B)(1) and (2) have been satisfied.
  3. If the Department determines pursuant to R18-7-203(B)(3) that an ecological risk assessment is required, documentation that the requirements prescribed in R18-7-203(B)(3) have been satisfied.
  4. Soil sampling analytical results that are representative of the area remediated, including documentation that the laboratory analysis of samples has been performed by a laboratory licensed by the Arizona Department of Health Services under A.R.S. § 36-495 et seq. and 9 A.A.C. 14, Article 6.
  5. A statement signed by the person conducting the remediation certifying the following: I certify under penalty of law that this document and all attachments are, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.
- B.** The applicable Departmental program described in R18-7-202(A) or R18-7-202(B) shall evaluate the information described in R18-7-209(A). The Department may request additional information, or if the Department verifies compliance with the soil remediation standards set forth under this Article and closure requirements of the applicable program or programs identified in R18-7-202(A) or described in R18-7-202(B), the Department shall issue a Letter of Completion, or an alternative closure document provided for by statute or rule that certifies the soil standards in this Article have been achieved.
- C.** The applicable Departmental program described in R18-7-202(A) or R18-7-202(B) may revoke or amend any Letter of Completion or alternative closure document described in R18-7-209(B) if any of the information submitted pursuant to R18-7-208 or R18-7-209(A) is inaccurate or if any condition was unknown to the Department when the Department issued the Letter of Completion or alternative closure document.

**Historical Note**

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-208 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Former R18-7-209 renumbered to R18-7-210; new R18-7-209 renumbered from R18-7-208 and amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

**R18-7-210. Notice of Remediation and Repository**

- A.** A person conducting soil remediation shall submit a Notice of Remediation to the applicable Departmental program listed in R18-7-202(A) or R18-7-202(B) before beginning remediation. A person conducting a soil remediation to address an immediate and substantial endangerment to public health or the environment and who has notified the Department in accordance with notification requirements prescribed in A.R.S. § 49-284 is not required to submit a Notice of Remediation before beginning remediation. Any person who continues soil remediation after the immediate and substantial endangerment has been abated shall submit a Notice of Remediation. A Notice of Remediation shall include all of the following information:
1. The name and address of the real property owner;
  2. The name and address of the remediating party;
  3. A legal description and street address of the property;
  4. A list of each contaminant to be remediated;
  5. The background concentration, SRL, or site-specific remediation level selected to meet the remediation standards;
  6. A description of the current and post-remediation property use as either residential or non-residential;
  7. The rationale for the selection of residential or non-residential remediation; and
  8. The proposed technologies for remediating the site.
- B.** The Department shall maintain a repository available to the public for information regarding sites where soil is remediated. The Repository shall include a listing of sites for which a Notice of Remediation has been submitted or a Letter of Completion or alternative closure document has been issued.
1. For sites where a Notice of Remediation has been filed, the Repository shall contain the date the notice was filed and the information submitted as described in subsection (A).
  2. For sites where a Letter of Completion or alternative closure document has been issued, the Repository shall contain the following:
    - a. The name and address of the real property owner;
    - b. The name and address of the remediating party;
    - c. A legal description and street address of the property;
    - d. A listing of each contaminant that was remediated;
    - e. The background concentration, SRL, or site-specific remediation level selected to meet the remediation standard;
    - f. A description whether the residential or non-residential standard was achieved;
    - g. A description of any engineering or institutional control used to remediate the site; and
    - h. The date when the Letter of Completion or alternative closure document was issued.

**Historical Note**

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency amendment reinstated at the request of the Department (see Supp. 97-1); historical note from Supp. 97-3 stating emergency expired removed for clarity. Section R18-7-208 adopted permanently effective December 4, 1997, replacing emergency rule (Supp. 97-4). Section R18-7-210 renumbered from R18-7-209 and amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

## Appendix A. Soil Remediation Levels (SRLs)

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Acephate	30560-19-1	ca, nc	63	630	240	2,000
Acetaldehyde	75-07-0	ca, nc	11	110	50	160
Acetochlor	34256-82-1	nc			1,200	12,000
Acetone	67-64-1	nc			14,000	54,000
Acetone cyanohydrin	75-86-5	nc			49	490
Acetonitrile	75-05-8	nc			420	1,800
Acrolein	107-02-8	nc			0.10	0.34
Acrylamide	79-06-1	ca, nc	0.12	1.2		3.8
Acrylic acid	79-10-7	nc			29,000	270,000
Acrylonitrile	107-13-1	ca, nc	0.21	2.1		4.9
Alachlor	15972-60-8	ca, nc	6.8	68		210
Alar	1596-84-5	nc			9,200	92,000
Aldicarb	116-06-3	nc			61	620
Aldicarb sulfone	1646-88-4	nc			61	620
Aldrin	309-00-2	ca, nc	0.032	0.32		1.0
Ally	74223-64-6	nc			15,000	150,000
Allyl alcohol	107-18-6	nc			310	3,100
Allyl chloride	107-05-1	nc			18	180
Aluminum	7429-90-5	nc			76,000	920,000
Aluminum phosphide	20859-73-8	nc			31	410
Amdro	67485-29-4	nc			18	180
Ametryn	834-12-8	nc			550	5,500
Aminodinitrotoluene	1321-12-6	nc			12	120
m-Aminophenol	591-27-5	nc			4,300	43,000
4-Aminopyridine	504-24-5	nc			1.2	12
Amitraz	33089-61-1	nc			150	1,500
Ammonium sulfamate	7773-06-0	nc			12,000	120,000
Aniline	62-53-3	ca, nc	96	960	430	3,000
Antimony and compounds	7440-36-0	nc			31	410
Apollo	74115-24-5	nc			790	8,000
Aramite	140-57-8	ca, nc	22	220		690
<b>Arsenic<sup>1</sup></b>	7440-38-2	ca, nc	10	10	10	10
Assure	76578-12-6	nc			550	5,500

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Asulam	3337-71-1	nc			3,100	31,000
Atrazine	1912-24-9	ca, nc	2.5	25		78
Avermectin B1	71751-41-2	nc			24	250
Azobenzene	103-33-3	ca	5.0	50		160
Barium and compounds	7440-39-3	nc			15,000	170,000
Baygon	114-26-1	nc			240	2,500
Bayleton	43121-43-3	nc			1,800	18,000
Baythroid	68359-37-5	nc			1,500	15,000
Benefin	1861-40-1	nc			18,000	180,000
Benomyl	17804-35-2	nc			3,100	31,000
Bentazon	25057-89-0	nc			1,800	18,000
Benzaldehyde	100-52-7	nc			6,100	62,000
<b>Benzene</b>	71-43-2	ca, nc	0.65	NA		1.4
<b>Benzidine</b>	92-87-5	ca, nc	0.0024	NA		0.0075
Benzoic acid	65-85-0	nc			240,000	1,000,000 **
Benzotrichloride	98-07-7	ca	0.042	0.42		1.3
Benzyl alcohol	100-51-6	nc			18,000	180,000
Benzyl chloride	100-44-7	ca, nc	0.92	9.2		22
Beryllium and compounds	7440-41-7	ca, nc			150	1,900
Bidrin	141-66-2	nc			6.1	62
Biphenthrin (Talstar)	82657-04-3	nc			920	9,200
1,1-Biphenyl	92-52-4	nc			350 *	350 *
Bis(2-chloroethyl)ether	111-44-4	ca	0.23	2.3		5.8
Bis(2-chloroisopropyl)ether	39638-32-9	nc			790 *	790 *
<b>Bis(chloromethyl)ether</b>	542-88-1	ca	0.00020	NA		0.00043
Bis(2-chloro-1-methylethyl)ether	108-60-1	ca, nc	3.0	30		74
Bis(2-ethylhexyl)phthalate (DEHP)	117-81-7	ca, nc	39	390		1200
Bisphenol A	80-05-7	nc			3,100	31,000
Boron	7440-42-8	nc			16,000	200,000
Bromate	15541-45-4	ca, nc	0.78	7.8		25
Bromobenzene	108-86-1	nc			28	92
Bromodichloromethane	75-27-4	ca, nc	0.83	8.3		18
Bromoform (tribromomethane)	75-25-2	ca, nc	69	690		2,200
Bromomethane (methyl bromide)	74-83-9	nc			3.9	13
Bromophos	2104-96-3	nc			310	3,100

## Department of Environmental Quality – Remedial Action

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Bromoxynil	1689-84-5	nc			1,200	12,000
Bromoxynil octanoate	1689-99-2	nc			1,200	12,000
1,3-Butadiene	106-99-0	ca, nc	0.058	0.58		1.2
1-Butanol	71-36-3	nc			6,100	61,000
Butylate	2008-41-5	nc			3,100	31,000
n-Butylbenzene	104-51-8	nc			240 *	240 *
sec-Butylbenzene	135-98-8	nc			220 *	220 *
tert-Butylbenzene	98-06-6	nc			390 *	390 *
Butyl benzyl phthalate	85-68-7	nc			12,000	120,000
Butylphthalyl butylglycolate	85-70-1	nc			61,000	620,000
Cadmium and compounds	7440-43-9	ca, nc			39	510
Caprolactam	105-60-2	nc			31,000	310,000
Captafol	2425-06-1	ca, nc	64	640	120	1,200
Captan	133-06-2	ca, nc	160	1,600		4,900
Carbaryl	63-25-2	nc			6,100	62,000
Carbazole	86-74-8	ca	27	270		860
Carbofuran	1563-66-2	nc			310	3,100
Carbon disulfide	75-15-0	nc			360	720 *
Carbon tetrachloride	56-23-5	ca, nc	0.25	2.5	2.2	5.5
Carbosulfan	55285-14-8	nc			610	6,200
Carboxin	5234-68-4	nc			6,100	62,000
Chloral hydrate	302-17-0	nc			6,100	62,000
Chloramben	133-90-4	nc			920	9,200
Chloranil	118-75-2	ca	1.4	14		43
Chlordane	12789-03-6	ca, nc	1.9	19		65
Chlorimuron-ethyl	90982-32-4	nc			1,200	12,000
Chloroacetic acid	79-11-8	nc			120	1,200
2-Chloroacetophenone	532-27-4	nc			0.033	0.11
4-Chloroaniline	106-47-8	nc			240	2,500
Chlorobenzene	108-90-7	nc			150	530
Chlorobenzilate	510-15-6	ca, nc	2.0	20		64
p-Chlorobenzoic acid	74-11-3	nc			12,000	120,000
4-Chlorobenzotrifluoride	98-56-6	nc			1,200	12,000
2-Chloro-1,3-butadiene	126-99-8	nc			3.6	12
1-Chlorobutane	109-69-3	nc			480 *	480 *

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
1-Chloro-1,1-difluoroethane	75-68-3	nc			340 *	340 *
Chlorodifluoromethane	75-45-6	nc			340 *	340 *
Chloroethane	75-00-3	ca, nc	3.0	30		65
Chloroform	67-66-3	ca, nc	0.94	9.4		20
Chloromethane	74-87-3	nc			48	160
4-Chloro-2-methylaniline	95-69-2	ca	0.94	9.4		30
4-Chloro-2-methylaniline hydrochloride	3165-93-3	ca	1.2	12		37
beta-Chloronaphthalene	91-58-7	nc			110 *	110 *
o-Chloronitrobenzene	88-73-3	ca, nc			1.4	4.5
p-Chloronitrobenzene	100-00-5	ca, nc			10	37
2-Chlorophenol	95-57-8	nc			63	240
2-Chloropropane	75-29-6	nc			170	590
Chlorothalonil	1897-45-6	ca, nc	50	500		1600
o-Chlorotoluene	95-49-8	nc			160	510 *
Chlorpropham	101-21-3	nc			12,000	120,000
Chlorpyrifos	2921-88-2	nc			180	1,800
Chlorpyrifos-methyl	5598-13-0	nc			610	6,200
Chlorsulfuron	64902-72-3	nc			3,100	31,000
Chlorthiophos	60238-56-4	nc			49	490
Chromium III	16065-83-1	nc			120,000	1,000,000 **
<b>Chromium VI</b>	18540-29-9	ca, nc	30	NA		65
Cobalt	7440-48-4	ca, nc	900	9,000	1,400	13,000
Copper and compounds	7440-50-8	nc			3,100	41,000
Crotonaldehyde	123-73-9	ca	0.0053	0.053		0.11
Cumene (isopropylbenzene)	98-82-8	nc			92 *	92 *
Cyanazine	21725-46-2	ca, nc	0.65	6.5		21
Cyanide (free) <sup>2</sup>	57-12-5	nc			1,200	12,000
Cyanide (hydrogen) <sup>3</sup>	74-90-8	nc			11	35
Cyanogen	460-19-5	nc			130	430
Cyanogen bromide	506-68-3	nc			290	970
Cyanogen chloride	506-77-4	nc			160	540
Cyclohexane	110-82-7	nc			140 *	140 *
Cyclohexanone	108-94-1	nc			310,000	1,000,000 **
Cyclohexylamine	108-91-8	nc			12,000	120,000
Cyhalothrin/Karate	68085-85-8	nc			310	3,100

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CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Cypermethrin	52315-07-8	nc			610	6,200
Cyromazine	66215-27-8	nc			460	4,600
Dacthal	1861-32-1	nc			610	6,200
Dalapon	75-99-0	nc			1,800	18,000
Danitol	39515-41-8	nc			1,500	15,000
DDD	72-54-8	ca	2.8	28		100
DDE	72-55-9	ca	2.0	20		70
DDT	50-29-3	ca, nc	2.0	20		70
Decabromodiphenyl ether	1163-19-5	nc			610	6,200
Demeton	8065-48-3	nc			2.4	25
Diallate	2303-16-4	ca	9.0	90		280
Diazinon	333-41-5	nc			55	550
Dibenzofuran	132-64-9	nc			140 *	140 *
1,4-Dibromobenzene	106-37-6	nc			610	6,200
Dibromochloromethane	124-48-1	ca, nc	1.1	11		26
1,2-Dibromo-3-chloropropane	96-12-8	ca, nc	0.53	5.3	1.5	6.5
1,2-Dibromoethane	106-93-4	ca, nc	0.029	0.29		0.63
Dibutyl phthalate	84-74-2	nc			6,100	62,000
Dicamba	1918-00-9	nc			1,800	18,000
1,2-Dichlorobenzene	95-50-1	nc			600 *	600 *
1,3-Dichlorobenzene	541-73-1	nc			530	600 *
1,4-Dichlorobenzene	106-46-7	ca, nc	3.5	35		79
3,3-Dichlorobenzidine	91-94-1	ca	1.2	12		38
4,4'-Dichlorobenzophenone	90-98-2	nc			1,800	18,000
1,4-Dichloro-2-butene	764-41-0	ca	0.0080	0.080		0.18
Dichlorodifluoromethane	75-71-8	nc			94	310
1,1-Dichloroethane	75-34-3	nc			510	1,700 *
1,2-Dichloroethane (DCA)	107-06-2	ca, nc	0.28	2.8		6.0
1,1-Dichloroethylene (DCE)	75-35-4	nc			120	410
1,2-Dichloroethylene (cis)	156-59-2	nc			43	150
1,2-Dichloroethylene (trans)	156-60-5	nc			69	230
2,4-Dichlorophenol	120-83-2	nc			180	1,800
4-(2,4-Dichlorophenoxy)butyric acid	94-82-6	nc			490	4,900
2,4-Dichlorophenoxyacetic Acid (2,4-D)	94-75-7	nc			690	7,700
1,2-Dichloropropane	78-87-5	ca, nc	0.34	3.4		7.4

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
1,3-Dichloropropane	142-28-9	nc			100	360
1,3-Dichloropropene	542-75-6	ca, nc	0.79	7.9		18
2,3-Dichloropropanol	616-23-9	nc			180	1,800
Dichlorvos	62-73-7	ca, nc	1.9	19		59
Dicofol	115-32-2	ca	1.2	12		39
Dicyclopentadiene	77-73-6	nc			0.54	1.8
Dieldrin	60-57-1	ca, nc	0.034	0.34		1.1
Diethylene glycol, monobutyl ether	112-34-5	nc			610	6,200
Diethylene glycol, monomethyl ether	111-90-0	nc			3,700	37,000
Diethylformamide	617-84-5	nc			24	250
Di(2-ethylhexyl)adipate	103-23-1	ca, nc	460	4,600		14,000
Diethyl phthalate	84-66-2	nc			49,000	490,000
<b>Diethylstilbestrol</b>	56-53-1	ca	0.00012	NA		0.0037
Difenzoquat (Avenge)	43222-48-6	nc			4,900	49,000
Diflubenzuron	35367-38-5	nc			1,200	12,000
Diisononyl phthalate	28553-12-0	nc			1,200	12,000
Diisopropyl methylphosphonate	1445-75-6	nc			4,900	49,000
Dimethipin	55290-64-7	nc			1,200	12,000
Dimethoate	60-51-5	nc			12	120
3,3'-Dimethoxybenzidine	119-90-4	ca	39	390		1,200
Dimethylamine	124-40-3	nc			0.067	0.25
N-N-Dimethylaniline	121-69-7	nc			120	1,200
2,4-Dimethylaniline	95-68-1	ca	0.73	7.3		23
2,4-Dimethylaniline hydrochloride	21436-96-4	ca	0.94	9.4		30
3,3'-Dimethylbenzidine	119-93-7	ca	0.24	2.4		7.5
N,N-Dimethylformamide	68-12-2	nc			6,100	62,000
Dimethylphenethylamine	122-09-8	nc			61	620
2,4-Dimethylphenol	105-67-9	nc			1,200	12,000
2,6-Dimethylphenol	576-26-1	nc			37	370
3,4-Dimethylphenol	95-65-8	nc			61	620
Dimethyl phthalate	131-11-3	nc			610,000	1,000,000 **
Dimethyl terephthalate	120-61-6	nc			6,100	62,000
4,6-Dinitro-o-cyclohexyl phenol	131-89-5	nc			120	1,200
1,2-Dinitrobenzene	528-29-0	nc			6.1	62
1,3-Dinitrobenzene	99-65-0	nc			6.1	62

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CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
1,4-Dinitrobenzene	100-25-4	nc			6.1	62
2,4-Dinitrophenol	51-28-5	nc			120	1,200
Dinitrotoluene mixture	25321-14-6	ca	0.81	8.1		25
2,4-Dinitrotoluene	121-14-2	nc			120	1,200
2,6-Dinitrotoluene	606-20-2	nc			61	620
Dinoseb	88-85-7	nc			61	620
di-n-Octyl phthalate	117-84-0	nc			2,400	25,000
1,4-Dioxane	123-91-1	ca	50	500		1,600
Dioxin (2,3,7,8-TCDD)	1746-01-6	ca	0.0000045	0.000045		0.00016
Diphenamid	957-51-7	nc			1,800	18,000
Diphenylamine	122-39-4	nc			1,500	15,000
N,N-Diphenyl-1,4 benzenediamine (DPPD)	74-31-7	nc			18	180
1,2-Diphenylhydrazine	122-66-7	ca	0.68	6.8		22
Diphenyl sulfone	127-63-9	nc			180	1,800
Diquat	85-00-7	nc			130	1,400
<b>Direct black 38</b>	1937-37-7	ca	0.064	NA		0.20
<b>Direct blue 6</b>	2602-46-2	ca	0.068	NA		0.21
<b>Direct brown 95</b>	16071-86-6	ca	0.059	NA		0.19
Disulfoton	298-04-4	nc			2.4	25
1,4-Dithiane	505-29-3	nc			610	6,200
Diuron	330-54-1	nc			120	1,200
Dodine	2439-10-3	nc			240	2,500
Dysprosium	7429-91-6	nc			7,800	102,000
Endosulfan	115-29-7	nc			370	3,700
Endothall	145-73-3	nc			1,200	12,000
Endrin	72-20-8	nc			18	180
Epichlorohydrin	106-89-8	ca, nc			7.6	26
1,2-Epoxybutane	106-88-7	nc			350	3,500
EPTC (S-Ethyl dipropylthiocarbamate)	759-94-4	nc			1,500	15,000
Ethephon (2-chloroethyl phosphonic acid)	16672-87-0	nc			310	3,100
Ethion	563-12-2	nc			31	310
2-Ethoxyethanol	110-80-5	nc			24,000	250,000
2-Ethoxyethanol acetate	111-15-9	nc			18,000	180,000
Ethyl acetate	141-78-6	nc			19,000	37,000 *
Ethyl acrylate	140-88-5	ca	0.21	2.1		4.5

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Ethylbenzene	100-41-4	nc			400 *	400 *
Ethyl chloride	75-00-3	ca, nc	3.0	30		65
Ethylene cyanohydrin	109-78-4	nc			18,000	180,000
Ethylene diamine	107-15-3	nc			5,500	55,000
Ethylene glycol	107-21-1	nc			120,000	1,000,000 **
Ethylene glycol, monobutyl ether	111-76-2	nc			31,000	310,000
Ethylene oxide	75-21-8	ca	0.14	1.4		3.4
Ethylene thiourea (ETU)	96-45-7	ca, nc			4.9	49
Ethyl ether	60-29-7	nc			1,800 *	1,800 *
Ethyl methacrylate	97-63-2	nc			140 *	140 *
Ethyl p-nitrophenyl phenylphosphorothioate	2104-64-5	nc			0.61	6.2
Ethylphthalyl ethyl glycolate	84-72-0	nc			180,000	1,000,000 **
Express	101200-48-0	nc			490	4,900
Fenamiphos	22224-92-6	nc			15	150
Fluometuron	2164-17-2	nc			790	8,000
Fluoride	16984-48-8	nc			3,700	37,000
Fluoridone	59756-60-4	nc			4,900	49,000
Flurprimidol	56425-91-3	nc			1,200	12,000
Flutolanil	66332-96-5	nc			3,700	37,000
Fluvalinate	69409-94-5	nc			610	6,200
Folpet	133-07-3	ca, nc	160	1,600		4,900
Fomesafen	72178-02-0	ca	2.9	29		91
Fonofos	944-22-9	nc			120	1,200
Formaldehyde	50-00-0	ca, nc			9,200	92,000
Formic Acid	64-18-6	nc			110,000	1,000,000 **
Fosetyl-al	39148-24-8	nc			180,000	1,000,000 **
Furan	110-00-9	nc			2.5	8.5
Furazolidone	67-45-8	ca	0.14	1.4		4.5
Furfural	98-01-1	nc			180	1,800
Furium	531-82-8	ca	0.011	0.11		0.34
Furmecyclox	60568-05-0	ca	18	180		570
Glufosinate-ammonium	77182-82-2	nc			24	250
Glycidaldehyde	765-34-4	nc			24	250
Glyphosate	1071-83-6	nc			6,100	62,000
Haloxypop-methyl	69806-40-2	nc			3.1	31

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CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Harmony	79277-27-3	nc			790	8,003
Heptachlor	76-44-8	ca, nc	0.12	1.2		3.8
Heptachlor epoxide	1024-57-3	ca, nc	0.060	0.60		1.9
Hexabromobenzene	87-82-1	nc			120	1,200
Hexachlorobenzene	118-74-1	ca, nc	0.34	3.4		11
Hexachlorobutadiene	87-68-3	ca, nc	7.0	70	18	180
HCH (alpha)	319-84-6	ca, nc	0.10	1.0		3.6
HCH (beta)	319-85-7	ca, nc	0.36	3.6		13
HCH (gamma) Lindane	58-89-9	ca, nc	0.50	5.0		17
HCH-technical	608-73-1	ca	0.36	3.6		13
Hexachlorocyclopentadiene	77-47-4	nc			370	3,700
Hexachloroethane	67-72-1	ca, nc	39	390	61	620
Hexachlorophene	70-30-4	nc			18	180
Hexahydro-1,3,5-trinitro-1,3,5-triazine	121-82-4	ca, nc	5.0	50		160
1,6-Hexamethylene diisocyanate	822-06-0	nc			0.17	1.8
n-Hexane	110-54-3	nc			110 *	110 *
Hexazinone	51235-04-2	nc			2,020	20,000
Hydrazine, hydrazine sulfate	302-01-2	ca	0.18	1.8		5.7
Hydrazine, monomethyl	60-34-4	ca	0.18	1.8		5.7
Hydrazine, dimethyl	57-14-7	ca	0.18	1.8		5.7
p-Hydroquinone	123-31-9	ca, nc	9.8	98		310
Imazalil	35554-44-0	nc			790	8,000
Imazaquin	81335-37-7	nc			15,000	150,000
Iprodione	36734-19-7	nc			2,400	25,000
Isobutanol	78-83-1	nc			13,000	40,000 *
Isophorone	78-59-1	ca, nc	580	5,800		18,000
Isopropalin	33820-53-0	nc			920	9,200
Isopropyl methyl phosphonic acid	1832-54-8	nc			6,100	62,000
Isoxaben	82558-50-7	nc			3,100	31,000
Kepone	143-50-0	ca, nc	0.068	0.68		2.2
Lactofen	77501-63-4	nc			120	1,200
Lead	7439-92-1	ca, nc			400	800
Lead (tetraethyl)	78-00-2	nc			0.0061	0.062
Linuron	330-55-2	nc			120	1,200
Lithium	7439-93-2	nc			1,600	20,000

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Londax	83055-99-6	nc			12,000	120,000
Malathion	121-75-5	nc			1,200	12,000
Maleic anhydride	108-31-6	nc			6,100	62,000
Maleic hydrazide	123-33-1	nc			1,700	2,400 *
Malononitrile	109-77-3	nc			6.1	62
Mancozeb	8018-01-7	nc			1,800	18,000
Maneb	12427-38-2	ca, nc	9.1	91		290
Manganese	7439-96-5	nc			3,300	32,000
Mephosfolan	950-10-7	nc			5.5	55
Mepiquat	24307-26-4	nc			1,800	18,000
2-Mercaptobenzothiazole	149-30-4	ca, nc	19	190		590
Mercury and compounds	7487-94-7	nc			23	310
Mercury (methyl)	22967-92-6	nc			6.1	62
Merphos	150-50-5	nc			1.8	18
Merphos oxide	78-48-8	nc			1.8	18
Metalaxyl	57837-19-1	nc			3,700	37,000
Methacrylonitrile	126-98-7	nc			2.1	8.4
Methamidophos	10265-92-6	nc			3.1	31
Methanol	67-56-1	nc			31,000	310,000
Methidathion	950-37-8	nc			61	620
Methomyl	16752-77-5	nc			44	150
Methoxychlor	72-43-5	nc			310	3,100
2-Methoxyethanol	109-86-4	nc			61	620
2-Methoxyethanol acetate	110-49-6	nc			120	1,200
2-Methoxy-5-nitroaniline	99-59-2	ca	12	120		370
Methyl acetate	79-20-9	nc			22,000	92,000
Methyl acrylate	96-33-3	nc			70	230
2-Methylaniline (o-toluidine)	95-53-4	ca	2.3	23		72
2-Methylaniline hydrochloride	636-21-5	ca	3.0	30		96
2-Methyl-4-chlorophenoxyacetic acid	94-74-6	nc			31	310
4-(2-Methyl-4-chlorophenoxy) butyric acid (MCPB)	94-81-5	nc			610	6,200
2-(2-Methyl-4-chlorophenoxy) propionic acid	93-65-2	nc			61	620
2-(2-Methyl-1,4-chlorophenoxy) propionic acid (MCPD)	16484-77-8	nc			61	620

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CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Methylcyclohexane	108-87-2	nc			230 *	230 *
4,4'-Methylenebisbenzeneamine	101-77-9	ca	2.2	22		69
4,4'-Methylene bis(2-chloroaniline)	101-14-4	ca, nc	4.2	42		130
4,4'-Methylene bis(N,N'-dimethyl) aniline	101-61-1	ca	12	120		370
Methylene bromide	74-95-3	nc			67	230
Methylene chloride	75-09-2	ca, nc	9.3	93		210
4,4'-Methylenediphenyl diisocyanate	101-68-8	nc			10	110
Methyl ethyl ketone (MEK)	78-93-3	nc			23,000	34,000 *
Methyl isobutyl ketone (MIBK)	108-10-1	nc			5,300	17,000 *
Methyl mercaptan	74-93-1	nc			35	350
Methyl methacrylate	80-62-6	nc			2,200	2,700 *
2-Methyl-5-nitroaniline	99-55-8	ca	17	170		520
Methyl parathion	298-00-0	nc			15	150
2-Methylphenol	95-48-7	nc			3,100	31,000
3-Methylphenol	108-39-4	nc			3,100	31,000
4-Methylphenol	106-44-5	nc			310	3,100
Methyl phosphonic acid	993-13-5	nc			1,200	12,000
Methyl styrene (mixture)	25013-15-4	nc			130	540
Methyl styrene (alpha)	98-83-9	nc			680 *	680 *
Methyl tertbutyl ether (MTBE)	1634-04-4	ca, nc	32	320		710
Metolaclo (Dual)	51218-45-2	nc			9,200	92,000
Metribuzin	21087-64-9	nc			1,500	15,000
Mirex	2385-85-5	ca, nc	0.30	3.0		9.6
Molinate	2212-67-1	nc			120	1,200
Molybdenum	7439-98-7	nc			390	5,100
Monochloramine	10599-90-3	nc			6,100	62,000
Naled	300-76-5	nc			120	1,200
Napropamide	15299-99-7	nc			6,100	62,000
Nickel and compounds	7440-02-0	nc			1,600	20,000
<b>Nickel subsulfide</b>	12035-72-2	ca	5,200	NA		11,000
2-Nitroaniline	88-74-4	nc			180	1,800
3-Nitroaniline	99-09-2	ca, nc			18	180
4-Nitroaniline	100-01-6	ca, nc	26	260	180	820
Nitrobenzene	98-95-3	nc			20	100
Nitrofurantoin	67-20-9	nc			4,300	43,000

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Nitrofurazone	59-87-0	ca	0.37	3.7		11
Nitroglycerin	55-63-0	ca	39	390		1,200
Nitroguanidine	556-88-7	nc			6,100	62,000
2-Nitropropane	79-46-9	ca, nc	0.0028	0.028		0.061
N-Nitrosodi-n-butylamine	924-16-3	ca	0.025	0.25		0.58
N-Nitrosodiethanolamine	1116-54-7	ca	0.20	2.0		6.2
N-Nitrosodiethylamine	55-18-5	ca	0.0037	0.037		0.11
N-Nitrosodimethylamine	62-75-9	ca, nc	0.011	0.11		0.34
N-Nitrosodiphenylamine	86-30-6	ca, nc	110	1,100		3,500
N-Nitroso di-n-propylamine	621-64-7	ca	0.078	0.78		2.5
N-Nitroso-N-methylethylamine	10595-95-6	ca	0.025	0.25		0.78
N-Nitrosopyrrolidine	930-55-2	ca	0.26	2.6		8.2
m-Nitrotoluene	99-08-1	nc			730	1,000 *
o-Nitrotoluene	88-72-2	ca, nc	0.93	9.3		22
p-Nitrotoluene	99-99-0	ca, nc	13	130		300
Norflurazon	27314-13-2	nc			2,400	25,000
NuStar	85509-19-9	nc			43	430
Octabromodiphenyl ether	32536-52-0	nc			180	1,800
Octahydro-1357-tetranitro-1357-tetrazocine (HMX)	2691-41-0	nc			3,100	31,000
Octamethylpyrophosphoramidate	152-16-9	nc			120	1,200
Oryzalin	19044-88-3	nc			3,100	31,000
Oxadiazon	19666-30-9	nc			310	3,100
Oxamyl	23135-22-0	nc			1,500	15,000
Oxyfluorfen	42874-03-3	nc			180	1,800
Paclobutrazol	76738-62-0	nc			790	8,000
Paraquat	4685-14-7	nc			270	2,800
Parathion	56-38-2	nc			370	3,700
Pebulate	1114-71-2	nc			3,100	31,000
Pendimethalin	40487-42-1	nc			2,400	25,000
Pentabromo-6-chloro cyclohexane	87-84-3	ca	24	240		750
Pentabromodiphenyl ether	32534-81-9	nc			120	1,200
Pentachlorobenzene	608-93-5	nc			49	490
Pentachloronitrobenzene	82-68-8	ca, nc	2.1	21		66
Pentachlorophenol	87-86-5	ca, nc	3.2	32		90
Perchlorate	7601-90-3	nc			55	720

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CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Permethrin	52645-53-1	nc			3,100	31,000
Phenmedipham	13684-63-4	nc			15,000	150,000
Phenol	108-95-2	nc			18,000	180,000
Phenothiazine	92-84-2	nc			120	1,200
m-Phenylenediamine	108-45-2	nc			370	3,700
o-Phenylenediamine	95-54-5	ca	12	120		370
p-Phenylenediamine	106-50-3	nc			12,000	120,000
Phenylmercuric acetate	62-38-4	nc			4.9	49
2-Phenylphenol	90-43-7	ca	280	2,800		8,900
Phorate	298-02-2	nc			12	120
Phosmet	732-11-6	nc			1,200	12,000
Phosphine	7803-51-2	nc			18	180
Phosphorus (white)	7723-14-0	nc			1.6	20
p-Phthalic acid	100-21-0	nc			61,000	620,000
Phthalic anhydride	85-44-9	nc			120,000	1,000,000 **
Picloram	1918-02-1	nc			4,300	43,000
Pirimiphos-methyl	29232-93-7	nc			610	6,200
Polybrominated biphenyls (PBBs)	NA	ca, nc	0.062	0.62	0.43	1.9
Polychlorinated biphenyls (PCBs), low-risk mixture <sup>4</sup>	12674-11-2	ca, nc			3.9	37
Polychlorinated biphenyls (PCBs), high-risk mixture <sup>5</sup>	11097-69-1	ca, nc	0.25	2.5	1.1	7.4
Polychlorinated terphenyls	61788-33-8	ca	0.12	1.2		3.8
Polynuclear aromatic hydrocarbons						
Acenaphthene	83-32-9	nc			3,700	29,000
Anthracene	120-12-7	nc			22,000	240,000
Benz[a]anthracene	56-55-3	ca	0.69	6.9		21
Benzo[b]fluoranthene	205-99-2	ca	0.69	6.9		21
Benzo[k]fluoranthene	207-08-9	ca	6.9	69		210
Benzo[a]pyrene	50-32-8	ca	0.069	0.69		2.1
Chrysene	218-01-9	ca	68	680		2,000
Dibenz[ah]anthracene	53-70-3	ca	0.069	0.69		2.1
Fluoranthene	206-44-0	nc			2,300	22,000
Fluorene	86-73-7	nc			2,700	26,000
Indeno[1,2,3-cd]pyrene	193-39-5	ca	0.69	6.9		21
Naphthalene	91-20-3	nc			56	190

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Pyrene	129-00-0	nc			2,300	29,000
Prochloraz	67747-09-5	ca, nc	3.7	37		110
Profluralin	26399-36-0	nc			370	3,700
Prometon	1610-18-0	nc			920	9,200
Prometryn	7287-19-6	nc			240	2,500
Pronamide	23950-58-5	nc			4,600	46,000
Propachlor	1918-16-7	nc			790	8,000
Propanil	709-98-8	nc			310	3,100
Propargite	2312-35-8	nc			1,200	12,000
Propargyl alcohol	107-19-7	nc			120	1,200
Propazine	139-40-2	nc			1,200	12,000
Propham	122-42-9	nc			1,200	12,000
Propiconazole	60207-90-1	nc			790	8,000
n-Propylbenzene	103-65-1	nc			240 *	240 *
Propylene glycol	57-55-6	nc			30,000	290,000
Propylene glycol, monoethyl ether	52125-53-8	nc			43,000	430,000
Propylene glycol, monomethyl ether	107-98-2	nc			43,000	430,000
Propylene oxide	75-56-9	ca, nc	2.2	22		66
Pursuit	81335-77-5	nc			15,000	150,000
Pydrin	51630-58-1	nc			1,500	15,000
Pyridine	110-86-1	nc			61	620
Quinalphos	13593-03-8	nc			31	310
Quinoline	91-22-5	ca	0.18	1.8		5.7
RDX (Cyclonite)	121-82-4	ca, nc	5.0	50		160
Resmethrin	10453-86-8	nc			1,800	18,000
Ronnel	299-84-3	nc			3,100	31,000
Rotenone	83-79-4	nc			240	2,500
Savey	78587-05-0	nc			1,500	15,000
Selenious Acid	7783-00-8	nc			310	3,100
Selenium	7782-49-2	nc			390	5,100
Selenourea	630-10-4	nc			310	3,100
Sethoxydim	74051-80-2	nc			5,500	55,000
Silver and compounds	7440-22-4	nc			390	5,100
Simazine	122-34-9	ca, nc	4.6	46		140
Sodium azide	26628-22-8	nc			310	4,100

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CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Sodium diethyldithiocarbamate	148-18-5	ca, nc	2.0	20		64
Sodium fluoroacetate	62-74-8	nc			1.2	12
Sodium metavanadate	13718-26-8	nc			61	620
Strontium, stable	7440-24-6	nc			47,000	610,000
Strychnine	57-24-9	nc			18	180
Styrene	100-42-5	nc			1,500 *	1,500 *
1,1'-Sulfonylbis-(4-chlorobenzene)	80-07-9	nc			310	3,100
Systhane	88671-89-0	nc			1,500	15,000
Tebuthiuron	34014-18-1	nc			4,300	43,000
Temephos	3383-96-8	nc			1,200	12,000
Terbacil	5902-51-2	nc			790	8,000
Terbufos	13071-79-9	nc			1.5	15
Terbutryn	886-50-0	nc			61	620
1,2,4,5-Tetrachlorobenzene	95-94-3	nc			18	180
1,1,1,2-Tetrachloroethane	630-20-6	ca, nc	3.2	32		73
1,1,1,2,2-Tetrachloroethane	79-34-5	ca, nc	0.42	4.2		9.3
Tetrachloroethylene (PCE)	127-18-4	ca, nc	0.51	5.1		13
2,3,4,6-Tetrachlorophenol	58-90-2	nc			1,800	18,000
p,a,a,a-Tetrachlorotoluene	5216-25-1	ca	0.027	0.27		0.86
Tetrachlorovinphos	961-11-5	ca, nc	23	230		720
Tetraethyldithiopyrophosphate	3689-24-5	nc			31	310
Tetrahydrofuran	109-99-9	ca, nc	9.5	95		210
Thallium and compounds	7440-28-0	nc			5.2	67
Thiobencarb	28249-77-6	nc			610	6,200
Thiocyanate	NA	nc			3,100	31,000
Thiofanox	39196-18-4	nc			18	180
Thiophanate-methyl	23564-05-8	nc			4,900	49,000
Thiram	137-26-8	nc			310	3,100
Tin	7440-31-5	nc			47,000	610,000
Titanium	7440-32-6	nc			310,000	1,000,000 **
Toluene	108-88-3	nc			650 *	650 *
Toluene-2,4-diamine	95-80-7	ca	0.17	1.7		5.4
Toluene-2,5-diamine	95-70-5	nc			37,000	370,000
Toluene-2,6-diamine	823-40-5	nc			12,000	120,000
p-Toluidine	106-49-0	ca	2.9	29		91

CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Toxaphene	8001-35-2	ca	0.50	5.0		16
Tralomethrin	66841-25-6	nc			460	4,600
Triallate	2303-17-5	nc			790	8,000
Triasulfuron	82097-50-5	nc			610	6,200
1,2,4-Tribromobenzene	615-54-3	nc			310	3,100
Tributyl phosphate	126-73-8	ca, nc	60	600		1,900
Tributyltin oxide (TBTO)	56-35-9	nc			18	180
2,4,6-Trichloroaniline	634-93-5	ca	16	160		510
2,4,6-Trichloroaniline hydrochloride	33663-50-2	ca	19	190		590
1,2,4-Trichlorobenzene	120-82-1	nc			62	220
1,1,1-Trichloroethane	71-55-6	nc			1,200 *	1,200 *
1,1,2-Trichloroethane	79-00-5	ca, nc	0.74	7.4		16
Trichloroethylene (TCE)	79-01-6	ca, nc	3.0	30	17	65
Trichlorofluoromethane	75-69-4	nc			390	1,300
2,4,5-Trichlorophenol	95-95-4	nc			6,100	62,000
2,4,6-Trichlorophenol	88-06-2	ca, nc			6.1	62
2,4,5-Trichlorophenoxyacetic Acid	93-76-5	nc			610	6,200
2-(2,4,5-Trichlorophenoxy) propionic acid	93-72-1	nc			490	4,900
1,1,2-Trichloropropane	598-77-6	nc			15	51
1,2,3-Trichloropropane	96-18-4	ca, nc	0.0050	0.050		0.11
1,2,3-Trichloropropene	96-19-5	nc			0.71	2.3
1,1,2-Trichloro-1,2,2-trifluoroethane (Freon 113)	76-13-1	nc			5,600 *	5,600 *
Tridiphane	58138-08-2	nc			180	1,800
Triethylamine	121-44-8	nc			23	86
Trifluralin	1582-09-8	ca, nc	71	710	460	2,200
Trimellitic Anhydride (TMAN)	552-30-7	nc			8.6	86
1,2,4-Trimethylbenzene	95-63-6	nc			52	170
1,3,5-Trimethylbenzene	108-67-8	nc			21	70
Trimethyl phosphate	512-56-1	ca	15	150		470
1,3,5-Trinitrobenzene	99-35-4	nc			1,800	18,000
Trinitrophenylmethylnitramine	479-45-8	nc			610	6,200
2,4,6-Trinitrotoluene	118-96-7	ca, nc	18	180	31	310
Triphenylphosphine oxide	791-28-6	nc			1,200	12,000
Tris(2-chloroethyl) phosphate	115-96-8	ca, nc	39	390		1,200
Tris(2-ethylhexyl) phosphate	78-42-2	ca, nc	170	1,700		5,400

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CONTAMINANT	CASRN	Class	Residential (mg/kg)			Non-residential (mg/kg)
			Carcinogen		Non-carcinogen	
			10 <sup>-6</sup> Risk	10 <sup>-5</sup> Risk		
Uranium (chemical toxicity only)	7440-61-0	nc			16	200
Vanadium and compounds	7440-62-2	nc			78	1,000
Vernam	1929-77-7	nc			61	620
Vinclozolin	50471-44-8	nc			1,500	15,000
Vinyl acetate	108-05-4	nc			430	1,400
Vinyl bromide	593-60-2	ca, nc	0.19	1.9		4.2
<b>Vinyl chloride</b>	75-01-4	ca, nc	0.085	NA		0.75
Warfarin	81-81-2	nc			18	180
Xylenes	1330-20-7	nc			270	420 *
Zinc	7440-66-6	nc			23,000	310,000
Zinc phosphide	1314-84-7	nc			23	310
Zineb	12122-67-7	nc			3,100	31,000
NA indicates not applicable.						
Class is the classification of the chemical. “ca” indicates carcinogenic effects; “nc” indicates non-carcinogenic effects. Chemicals that have both carcinogenic and non-carcinogenic effects are classified “ca, nc”.						
* Indicates SRL is based on the chemical-specific saturation level in soil for volatile organic chemicals only.						
** Indicates SRL is based on a 100% saturation ceiling limit for non-volatile organic chemicals.						
<sup>1</sup> Arsenic standards are not risk-based standards, but based on background.						
<sup>2</sup> Cyanide (free): Free cyanide is a subset of total cyanides. If any ADHS approved method for total cyanide reports a concentration exceeding this standard, further analyses to differentiate free cyanide from other cyanide metal complexes is required.						
<sup>3</sup> Cyanide (hydrogen): If the cyanide concentrations using any method exceed the hydrogen cyanide standard, then hydrogen cyanide vapor samples should be collected at the site.						
<sup>4</sup> PCBs, low-risk mixture: Use if laboratory analysis confirms that the total PCB concentration consists of 0.5 percent or less of congeners that contain five or more chlorines and that no dioxin-like congeners are present.						
<sup>5</sup> PCBs, high-risk mixture: Use if only total PCB concentration is reported by any ADHS licensed analytical method, or if laboratory analysis confirms that the total PCB concentration consists of more than 0.5 percent congeners that contain five or more chlorines or that dioxin-like congeners are present.						
Bold indicates adequate evidence to classify the chemical as a known human carcinogen.						
CASRN is the Chemical Abstract System Registry Number.						

**Historical Note**

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency appendix reinstated at the request of the Department; historical note from Supp. 97-3 stating emergency expired removed for clarity. Appendix A adopted permanently effective December 4, 1997, replacing emergency appendix (Supp. 97-4). Amended to correct measurement units in columns 5 and 6 from “mg/k” to “mg/kg” (Supp. 01-4). Former Appendix A renumbered to Appendix B; new Appendix A made by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

## Appendix B. 1997 Soil Remediation Levels (SRLs)

	Chemical Name	CAS Number	Cancer Group	Residential (mg/kg)	Non-residential (mg/kg)
<b>A</b>					
1	Acenaphthene	83-32-9	D	3900.0	41000.0
2	Acephate	30560-19-1	C	260.0	2200.0
3	Acetaldehyde	75-07-0	B2	39.0	150.0
4	Acetochlor	34256-82-1	D	1300.0	14000.0
5	Acetone	67-64-1	D	2100.0	8800.0
6	Acetone cyanohydrin	75-86-5	D	52.0	550.0
7	Acetonitrile	75-05-8	D	220.0	1200.0
8	Acetophenone	98-86-2	D	0.49	1.6
9	Acifluorfen	62476-59-9	D	850.0	8900.0
10	Acrolein	107-02-8	C	0.10	0.34
11	Acrylamide	79-06-1	B2	0.98	4.2
12	Acrylic acid	79-10-7	D	31000.0	290000.0
13	Acrylonitrile	107-13-1	B1	1.9	4.7
14	Alachlor	15972-60-8	B2	55.0	240.0
15	Alar	1596-84-5	D	9800.0	100000.0
16	Aldicarb	116-06-3	D	65.0	680.0
17	Aldicarb sulfone	1646-88-4	D	65.0	680.0
18	Aldrin	309-00-2	B2	0.26	1.1
19	Ally	74223-64-6	D	16000.0	170000.0
20	Allyl alcohol	107-18-6	D	330.0	3400.0
21	Allyl chloride	107-05-1	C	3200.0	33000.0
22	Aluminum	7429-90-5	D	77000.0	1000000.0
23	Aluminum phosphide	20859-73-8	D	31.0	680.0
24	Amdro	67485-29-4	D	20.0	200.0
25	Ametryn	834-12-8	D	590.0	6100.0
26	m-Aminophenol	591-27-5	D	4600.0	48000.0
27	4-Aminopyridine	504-24-5	D	1.3	14.0
28	Amitraz	33089-61-1	D	160.0	1700.0
29	Ammonia	7664-41-7	D	2200.0	58000.0
30	Ammonium sulfamate	7773-06-0	D	13000.0	140000.0
31	Aniline	62-53-3	B2	19.0	200.0
32	Anthracene	120-12-7	D	20000.0	200000.0
33	Antimony and compounds	7440-36-0	D	31.0	680.0
34	Antimony pentoxide	1314-60-9	D	38.0	850.0
35	Antimony potassium tartrate	28300-74-5	D	69.0	1500.0
36	Antimony tetroxide	1332-81-6	D	31.0	680.0
37	Antimony trioxide	1309-64-4	D	31.0	680.0
38	Apollo	74115-24-5	C	850.0	8900.0
39	Aramite	140-57-8	B2	180.0	760.0
40	~Arsenic	7440-38-2	A	10.0	10.0
41	Assure	76578-14-8	D	590.0	6100.0
42	Asulam	3337-71-1	D	3300.0	34000.0
43	Atrazine	1912-24-9	C	20.0	86.0
44	Avermectin B1	71751-41-2	D	26.0	270.0
45	Azobenzene	103-33-3	B2	40.0	170.0
<b>B</b>					
46	Barium and compounds	7440-39-3	D	5300.0	110000.0
47	Barium cyanide	542-62-1	D	7700.0	170000.0
48	Baygon	114-26-1	D	260.0	2700.0
49	Bayleton	43121-43-3	D	2000.0	20000.0
50	Baythroid	68359-37-5	D	1600.0	17000.0
51	Benefin	1861-40-1	D	20000.0	200000.0
52	Benomyl	17804-35-2	D	3300.0	34000.0
53	Bentazon	25057-89-0	D	160.0	1700.0
54	Benzaldehyde	100-52-7	D	6500.0	68000.0
55	Benz[a]anthracene	56-55-3	B2	6.1	26.0
56	Benzene	71-43-2	A	0.62	1.4

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	Chemical Name	CAS Number	Cancer Group	Residential (mg/kg)	Non-residential (mg/kg)
57	Benzidine	92-87-5	A	0.0019	0.0083
58	Benzo[a]pyrene	50-32-8	B2	0.61	2.6
59	Benzo[b]fluoranthene	205-99-2	B2	6.1	26.0
60	Benzoic acid	65-85-0	D	260000.0	1000000.0
61	Benzo[k]fluoranthene	207-08-9	B2	61.0	260.0
62	Benzotrichloride	98-07-7	B2	0.34	1.5
63	Benzyl alcohol	100-51-6	D	20000.0	200000.0
64	Benzyl chloride	100-44-7	B2	8.0	20.0
65	Beryllium and compounds	7440-41-7	B2	1.4	11.0
66	Bidrin	141-66-2	D	6.5	68.0
67	Biphenthrin (Talstar)	82657-04-3	D	980.0	10000.0
68	1,1-Biphenyl	92-52-4	D	3300.0	34000.0
69	Bis(2-chloroethyl)ether	111-44-4	B2	0.43	0.97
70	Bis(2-chloroisopropyl)ether	39638-32-9	C	25.0	67.0
71	Bis(chloromethyl)ether	542-88-1	A	0.0002	0.0004
72	Bis(2-chloro-1-methylethyl)ether	108-60-1	C	63.0	270.0
73	Bis(2-ethylhexyl)phthalate (DEHP)	117-81-7	B2	320.0	1400.0
74	Bisphenol A	80-05-7	D	3300.0	34000.0
75	Boron	7440-42-8	D	5900.0	61000.0
76	Bromodichloromethane	75-27-4	B2	6.3	14.0
77	Bromoform (tribromomethane)	75-25-2	B2	560.0	2400.0
78	Bromomethane	74-83-9	D	6.8	23.0
79	Bromophos	2104-96-3	D	330.0	3400.0
80	Bromoxynil	1689-84-5	D	1300.0	14000.0
81	Bromoxynil octanoate	1689-99-2	D	1300.0	14000.0
82	1,3-Butadiene	106-99-0	B2	0.064	0.14
83	1-Butanol	71-36-3	D	6500.0	68000.0
84	Butylate	2008-41-5	D	3300.0	34000.0
85	Butyl benzyl phthalate	85-68-7	C	13000.0	140000.0
86	Butylphthalyl butylglycolate	85-70-1	D	65000.0	680000.0
	<b>C</b>				
87	Cacodylic acid	75-60-5	D	200.0	2000.0
88	Cadmium and compounds	7440-43-9	B1	38.0	850.0
89	Calcium cyanide	592-01-8	D	3100.0	68000.0
90	Caprolactam	105-60-2	D	33000.0	340000.0
91	Captafol	2425-06-1	C	130.0	1400.0
92	Captan	133-06-2	D	1300.0	5500.0
93	Carbaryl	63-25-2	D	6500.0	68000.0
94	Carbazole	86-74-8	B2	220.0	950.0
95	Carbofuran	1563-66-2	E	330.0	3400.0
96	Carbon disulfide	75-15-0	D	7.5	24.0
97	Carbon tetrachloride	56-23-5	B2	1.6	5.0
98	Carbosulfan	55285-14-8	D	650.0	6800.0
99	Carboxin	5234-68-4	D	6500.0	68000.0
100	Chloral (hydrate)	302-17-0	D	130.0	1400.0
101	Chloramben	133-90-4	D	980.0	10000.0
102	Chloranil	118-75-2	C	11.0	47.0
103	Chlordane	12789-03-6	B2	3.4	15.0
104	Chlorimuron-ethyl	90982-32-4	D	1300.0	14000.0
105	Chlorine cyanide	506-77-4	D	3800.0	85000.0
106	Chloroacetic acid	79-11-8	D	130.0	1400.0
107	2-Chloroacetophenone	532-27-4	D	0.56	5.9
108	4-Chloroaniline	106-47-8	D	260.0	2700.0
109	Chlorobenzene	108-90-7	D	65.0	220.0
110	Chlorobenzilate	510-15-6	B2	16.0	71.0
111	p-Chlorobenzoic acid	74-11-3	D	13000.0	140000.0
112	4-Chlorobenzotrifluoride	98-56-6	D	1300.0	14000.0
113	2-Chloro-1,3-butadiene	126-99-8	D	3.6	12.0
114	1-Chlorobutane	109-69-3	D	710.0	2400.0

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	Chemical Name	CAS Number	Cancer Group	Residential (mg/kg)	Non-residential (mg/kg)
115	* 1-Chloro-1,1-difluoroethane	75-68-3	D	2800.0	2800.0
116	* Chlorodifluoromethane	75-45-6	D	2800.0	2800.0
117	Chloroform	67-66-3	B2	2.5	5.3
118	Chloromethane	74-87-3	C	12.0	26.0
119	4-Chloro-2-methylaniline	95-69-2	B2	7.7	33.0
120	4-Chloro-2-methylaniline hydrochloride	3165-93-3	B2	9.7	41.0
121	beta-Chloronaphthalene	91-58-7	D	5200.0	55000.0
122	o-Chloronitrobenzene	88-73-3	B2	180.0	760.0
123	p-Chloronitrobenzene	100-00-5	B2	250.0	1100.0
124	2-Chlorophenol	95-57-8	D	91.0	370.0
125	2-Chloropropane	75-29-6	D	170.0	580.0
126	Chlorothalonil	1897-45-6	B2	400.0	1700.0
127	* o-Chlorotoluene	95-49-8	D	160.0	550.0
128	Chlorpropham	101-21-3	D	13000.0	140000.0
129	Chlorpyrifos	2921-88-2	D	200.0	2000.0
130	Chlorpyrifos-methyl	5598-13-0	D	650.0	6800.0
131	Chlorsulfuron	64902-72-3	D	3300.0	34000.0
132	Chlorthiophos	602-38-56-4	D	52.0	550.0
133	Chromium, Total (1/6 ratio Cr VI/Cr III)	N/A	D	2100.0	4500.0
134	Chromium III	16065-83-1	D	77000.0	1000000.0
135	Chromium VI	7440-47-3	A	30.0	64.0
136	Chrysene	218-01-9	B2	610.0	2600.0
137	Cobalt	7440-48-4	D	4600.0	97000.0
138	Copper and compounds	7440-50-8	D	2800.0	63000.0
139	Copper cyanide	544-92-3	D	380.0	8500.0
140	Crotonaldehyde	123-73-9	C	0.052	0.11
141	Cumene	98-82-8	D	19.0	62.0
142	Cyanazine	21725-46-2	D	5.3	23.0
143	Cyanide, Free	57-12-5	D	1300.0	14000.0
144	Cyanogen	460-19-5	D	2600.0	27000.0
145	Cyanogen bromide	506-68-3	D	5900.0	61000.0
146	Cyanogen chloride	506-77-4	D	3300.0	34000.0
147	Cyclohexanone	108-94-1	D	330000.0	1000000.0
148	Cyclohexylamine	108-91-8	D	13000.0	140000.0
149	Cyhalothrin/Karate	68085-85-8	D	330.0	3400.0
150	Cypermethrin	52315-07-8	D	650.0	6800.0
151	Cyromazine	66215-27-8	D	490.0	5100.0
	<b>D</b>				
152	Dacthal	1861-32-1	D	650.0	6800.0
153	Dalapon	75-99-0	D	2000.0	20000.0
154	Danitol	39515-41-8	D	1600.0	17000.0
155	DDD	72-54-8	B2	19.0	80.0
156	DDE	72-55-9	B2	13.0	56.0
157	DDT	50-29-3	B2	13.0	56.0
158	Decabromodiphenyl ether	1163-19-5	C	650.0	6800.0
159	Demeton	8065-48-3	D	2.6	27.0
160	Diallate	2303-16-4	B2	73.0	310.0
161	Diazinon	333-41-5	E	59.0	610.0
162	Dibenz[ah]anthracene	53-70-3	B2	0.61	2.6
163	Dibenzofuran	132-64-9	D	260.0	2700.0
164	1,4-Dibromobenzene	106-37-6	D	650.0	6800.0
165	Dibromochloromethane	124-48-1	C	53.0	230.0
166	1,2-Dibromo-3-chloropropane	96-12-8	B2	3.2	14.0
167	1,2-Dibromoethane	106-93-4	B2	0.049	0.2
168	Dibutyl phthalate	84-74-2	D	6500.0	68000.0
169	Dicamba	1918-00-9	D	2000.0	20000.0
170	* 1,2-Dichlorobenzene	95-50-1	D	1100.0	3900.0
171	* 1,3-Dichlorobenzene	541-73-1	D	500.0	2000.0
172	1,4-Dichlorobenzene	106-46-7	C	190.0	790.0

## Department of Environmental Quality – Remedial Action

	<b>Chemical Name</b>	<b>CAS Number</b>	<b>Cancer Group</b>	<b>Residential (mg/kg)</b>	<b>Non-residential (mg/kg)</b>
173	3,3-Dichlorobenzidine	91-94-1	B2	9.9	42.0
174	1,4-Dichloro-2-butene	764-41-0	B2	0.074	0.17
175	Dichlorodifluoromethane	75-71-8	D	94.0	310.0
176	1,1-Dichloroethane	75-34-3	C	500.0	1700.0
177	1,2-Dichloroethane (EDC)	107-06-2	B2	2.5	5.5
178	1,1-Dichloroethylene	75-35-4	C	0.36	0.8
179	1,2-Dichloroethylene (cis)	156-59-2	D	31.0	100.0
180	1,2-Dichloroethylene (trans)	156-60-5	D	78.0	270.0
181	1,2-Dichloroethylene (mixture)	540-59-0	D	35.0	120.0
182	2,4-Dichlorophenol	120-83-2	D	200.0	2000.0
183	4-(2,4-Dichlorophenoxy)butyric Acid (2,4-DB)	94-82-6	D	520.0	5500.0
184	2,4-Dichlorophenoxyacetic Acid (2,4-D)	94-75-7	D	650.0	6800.0
185	1,2-Dichloropropane	78-87-5	B2	3.1	6.8
186	1,3-Dichloropropene	542-75-6	B2	2.4	5.5
187	2,3-Dichloropropanol	616-23-9	D	200.0	2000.0
188	Dichlorvos	62-73-7	B2	15.0	66.0
189	Dicofol	115-32-2	C	10.0	43.0
190	Dieldrin	60-57-1	B2	0.28	1.2
191	Diethylene glycol, monobutyl ether	112-34-5	D	370.0	3900.0
192	Diethylene glycol, monoethyl ether	111-90-0	D	130000.0	1000000.0
193	Diethylformamide	617-84-5	D	720.0	7500.0
194	Di(2-ethylhexyl)adipate	103-23-1	C	3700.0	16000.0
195	Diethyl phthalate	84-66-2	D	52000.0	550000.0
196	Diethylstilbestrol	56-53-1	A	0.0001	0.0004
197	Difenzoquat (Avenge)	43222-48-6	D	5200.0	55000.0
198	Diflubenzuron	35367-38-5	D	1300.0	14000.0
199	Diisopropyl methylphosphonate	1445-75-6	D	5200.0	55000.0
200	Dimethipin	55290-64-7	C	1300.0	14000.0
201	Dimethoate	60-51-5	D	13.0	140.0
202	3,3'-Dimethoxybenzidine	119-90-4	B2	320.0	1400.0
203	Dimethylamine	124-40-3	D	0.07	0.24
204	N-N-Dimethylaniline	121-69-7	D	130.0	1400.0
205	2,4-Dimethylaniline	95-68-1	C	5.9	25.0
206	2,4-Dimethylaniline hydrochloride	21436-96-4	C	7.7	33.0
207	3,3'-Dimethylbenzidine	119-93-7	B2	0.48	2.1
208	1,1-Dimethylhydrazine (Hydrazine, dimethyl)	57-14-7	B, C	1.7	7.3
209	1,2-Dimethylhydrazine	540-73-8	B2	0.12	0.52
210	N,N-Dimethylformamide	68-12-2	D	6500.0	68000.0
211	2,4-Dimethylphenol	105-67-9	D	1300.0	14000.0
212	2,6-Dimethylphenol	576-26-1	D	39.0	410.0
213	3,4-Dimethylphenol	95-65-8	D	65.0	680.0
214	Dimethyl phthalate	131-11-3	D	650000.0	1000000.0
215	Dimethyl terephthalate	120-61-6	D	6500.0	68000.0
216	4,6-Dinitro-o-cyclohexyl phenol	131-89-5	D	130.0	1400.0
217	1,3-Dinitrobenzene	99-65-0	D	6.5	68.0
218	1,2-Dinitrobenzene	528-29-0	D	26.0	270.0
219	1,4-Dinitrobenzene	100-25-4	D	26.0	270.0
220	2,4-Dinitrophenol	51-28-5	D	130.0	1400.0
221	Dinitrotoluene mixture	25321-14-6	B2	6.5	28.0
222	2,4-Dinitrotoluene	121-14-2	D	130.0	1400.0
223	2,6-Dinitrotoluene	606-20-2	D	65.0	680.0
224	Dinoseb	88-85-7	D	65.0	680.0
225	di-n-Octyl phthalate	117-84-0	D	1300.0	14000.0
226	1,4-Dioxane	123-91-1	B2	400.0	1700.0
227	Diphenamid	957-51-7	D	2000.0	20000.0
228	Diphenylamine	122-39-4	D	1600.0	17000.0
229	1,2-Diphenylhydrazine	122-66-7	B2	5.6	24.0
230	Diquat	85-00-7	D	140.0	1500.0

	Chemical Name	CAS Number	Cancer Group	Residential (mg/kg)	Non-residential (mg/kg)
231	Direct black 38	1937-37-7	A	0.052	0.22
232	Direct blue 6	2602-46-2	A	0.055	0.24
233	Direct brown 95	16071-86-6	A	0.048	0.21
234	Disulfoton	298-04-4	E	2.6	27.0
235	1,4-Dithiane	505-29-3	D	650.0	6800.0
236	Diuron	330-54-1	D	130.0	1400.0
237	Dodine	2439-10-3	D	260.0	2700.0
<b>E</b>					
238	Endosulfan	115-29-7	D	390.0	4100.0
239	Endothall	145-73-3	D	1300.0	14000.0
240	Endrin	72-20-8	D	20.0	200.0
241	Epichlorohydrin	106-89-8	B2	7.5	25.0
242	1,2-Epoxybutane	106-88-7	D	370.0	3900.0
243	EPTC (S-Ethyl dipropylthiocarbamate)	759-94-4	D	1600.0	17000.0
244	Ethephon (2-chloroethyl phosphonic acid)	16672-87-0	D	330.0	3400.0
245	Ethion	563-12-2	D	33.0	340.0
246	2-Ethoxyethanol	110-80-5	D	26000.0	270000.0
247	2-Ethoxyethanol acetate	111-15-9	D	20000.0	200000.0
248	* Ethyl acetate	141-78-6	D	18000.0	39000.0
249	Ethyl acrylate	140-88-5	B2	2.1	4.5
250	* Ethylbenzene	100-41-4	D	1500.0	2700.0
251	Ethylene cyanohydrin	109-78-4	D	20000.0	200000.0
252	Ethylene diamine	107-15-3	D	1300.0	14000.0
253	Ethylene glycol	107-21-1	D	130000.0	1000000.0
254	Ethylene glycol, monobutyl ether	111-76-2	D	370.0	3900.0
255	Ethylene oxide	75-21-8	B1	1.3	3.2
256	Ethylene thiourea (ETU)	96-45-7	B2	5.2	55.0
257	* Ethyl chloride	75-00-3	D	1100.0	4200.0
258	* Ethyl ether	60-29-7	D	3800.0	3800.0
259	* Ethyl methacrylate	97-63-2	D	210.0	690.0
260	Ethyl p-nitrophenyl phenylphosphorothioate	2104-64-5	D	0.65	6.8
261	Ethylphthalyl ethyl glycolate	84-72-0	D	200000.0	1000000.0
262	Express	101200-48-0	D	520.0	5500.0
<b>F</b>					
263	Fenamiphos	22224-92-6	D	16.0	170.0
264	Fluometuron	2164-17-2	D	850.0	8900.0
265	Fluoranthene	206-44-0	D	2600.0	27000.0
266	Fluorene	86-73-7	D	2600.0	27000.0
267	Fluorine (soluble fluoride)	7782-41-4	D	3900.0	41000.0
268	Fluoridone	59756-60-4	D	5200.0	55000.0
269	Flurprimidol	56425-91-3	D	1300.0	14000.0
270	Flutolanil	66332-96-5	D	3900.0	41000.0
271	Fluvalinate	69409-94-5	D	650.0	6800.0
272	Folpet	133-07-3	B2	1300.0	5500.0
273	Fomesafen	72178-02-0	C	23.0	100.0
274	Fonofos	944-22-9	D	130.0	1400.0
275	Formaldehyde	50-00-0	B1	9800.0	100000.0
276	Formic Acid	64-18-6	D	130000.0	1000000.0
277	Fosetyl-al	39148-24-8	C	200000.0	1000000.0
278	Furan	110-00-9	D	2.5	8.5
279	Furazolidone	67-45-8	B2	1.2	5.0
280	Furfural	98-01-1	D	200.0	2000.0
281	Furium	531-82-8	B2	0.089	0.38
282	Furmecyclox	60568-05-0	B2	150.0	640.0
<b>G</b>					
283	Glufosinate-ammonium	77182-82-2	D	26.0	270.0
284	Glycidaldehyde	765-34-4	B2	26.0	270.0
285	Glyphosate	1071-83-6	D	6500.0	68000.0
<b>H</b>					

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	<b>Chemical Name</b>	<b>CAS Number</b>	<b>Cancer Group</b>	<b>Residential (mg/kg)</b>	<b>Non-residential (mg/kg)</b>
286	Haloxypop-methyl	69806-40-2	D	3.3	34.0
287	Harmony	79277-27-3	D	850.0	8900.0
288	Heptachlor	76-44-8	B2	0.99	4.2
289	Heptachlor epoxide	1024-57-3	B2	0.49	2.1
290	Hexabromobenzene	87-82-1	D	130.0	1400.0
291	Hexachlorobenzene	118-74-1	B2	2.8	12.0
292	Hexachlorobutadiene	87-68-3	C	13.0	140.0
293	HCH (alpha)	319-84-6	B2	0.71	3.0
294	HCH (beta)	319-85-7	C	2.5	11.0
295	HCH (gamma) Lindane	58-89-9	B2-C	3.4	15.0
296	HCH-technical	608-73-1	B2	2.5	11.0
297	Hexachlorocyclopentadiene	77-47-4	D	450.0	4600.0
298	Hexachlorodibenzo-p-dioxin (HxCDD)	mixture 19408-74-3	B2	0.00072	0.0031
299	Hexachloroethane	67-72-1	C	65.0	680.0
300	Hexachlorophene	70-30-4	D	20.0	200.0
301	Hexahydro-1,3,5-trinitro-1,3,5-triazine	121-82-4	C	40.0	170.0
302	* n-Hexane	110-54-3	D	120.0	400.0
303	Hexazinone	51235-04-2	D	2200.0	22000.0
304	Hydrazine, hydrazine sulfate	302-01-2	B2	1.5	6.4
305	Hydrocarbons (C <sub>10</sub> to C <sub>32</sub> )	N/A	N/A	4100.0	18000.0
306	Hydrogen chloride	7647-01-0	D	370.0	3900.0
307	Hydrogen cyanide	74-90-8	D	11.0	35.0
308	p-Hydroquinone	123-31-9	D	2600.0	27000.0
	<b>I</b>				
309	Imazalil	35554-44-0	D	850.0	8900.0
310	Imazaquin	81335-37-7	D	16000.0	170000.0
311	Indeno[1,2,3-cd]pyrene	193-39-5	B2	6.1	26.0
312	Iprodione	36734-19-7	D	2600.0	27000.0
313	* Isobutanol	78-83-1	D	11000.0	42000.0
314	Isophorone	78-59-1	C	4700.0	20000.0
315	Isopropalin	33820-53-0	D	980.0	10000.0
316	Isopropyl methyl phosphonic acid	1832-54-8	D	6500.0	68000.0
317	Isoxaben	82558-50-7	C	3300.0	34000.0
	<b>K</b>				
318	Kepone	143-50-0	B, C	0.25	1.1
	<b>L</b>				
319	Lactofen	77501-63-4	D	130.0	1400.0
320	#Lead	7439-92-1	B2	400.0	2000.0
321	Lead (tetraethyl)	78-00-2	D	0.0065	0.068
322	Linuron	330-55-2	C	130.0	1400.0
323	Lithium	7439-93-2	D	1500.0	34000.0
324	Londax	83055-99-6	D	13000.0	140000.0
	<b>M</b>				
325	Malathion	121-75-5	D	1300.0	14000.0
326	Maleic anhydride	108-31-6	D	6500.0	68000.0
327	Maleic hydrazide	123-33-1	D	33000.0	340000.0
328	Malononitrile	109-77-3	D	1.3	14.0
329	Mancozeb	8018-01-7	D	2000.0	20000.0
330	Maneb	12427-38-2	D	330.0	3400.0
331	Manganese and compounds	7439-96-5	D	3200.0	43000.0
332	Mephosfolan	950-10-7	D	5.9	61.0
333	Mepiquat	24307-26-4	D	2000.0	20000.0
334	Mercuric chloride	7487-94-7	C	23.0	510.0
335	Mercury (elemental)	7439-97-6	D	6.7	180.0
336	Mercury (methyl)	22967-92-6	D	6.5	68.0
337	Merphos	150-50-5	D	2.0	20.0
338	Merphos oxide	78-48-8	D	2.0	20.0
339	Metalaxyl	57837-19-1	D	3900.0	41000.0

	Chemical Name	CAS Number	Cancer Group	Residential (mg/kg)	Non-residential (mg/kg)
340	Methacrylonitrile	126-98-7	D	2.0	8.1
341	Methamidophos	10265-92-6	D	3.3	34.0
342	Methanol	67-56-1	D	33000.0	340000.0
343	Methidathion	950-37-8	C	65.0	680.0
344	Methomyl	16752-77-5	D	1600.0	17000.0
345	Methoxychlor	72-43-5	D	330.0	3400.0
346	2-Methoxyethanol	109-86-4	D	65.0	680.0
347	2-Methoxyethanol acetate	110-49-6	D	130.0	1400.0
348	2-Methoxy-5-nitroaniline	99-59-2	C	97.0	410.0
349	Methyl acetate	79-20-9	D	21000.0	88000.0
350	Methyl acrylate	96-33-3	D	69.0	230.0
351	2-Methylaniline (o-toluidine)	95-53-4	B2	19.0	79.0
352	2-Methylaniline hydrochloride	636-21-5	B2	25.0	110.0
353	Methyl chlorocarbonate	79-22-1	D	65000.0	680000.0
354	2-Methyl-4-chlorophenoxyacetic acid	94-74-6	D	33.0	340.0
355	4-(2-Methyl-4-chlorophenoxy) butyric acid (MCPB)	94-81-5	D	650.0	6800.0
356	2-(2-Methyl-4-chlorophenoxy) propionic acid	93-65-2	D	65.0	680.0
357	2-(2-Methyl-1,4-chlorophenoxy) propionic acid (MCPB)	16484-77-8	D	65.0	680.0
358	Methylcyclohexane	108-87-2	D	56000.0	590000.0
359	4,4'-Methylenebisbenzeneamine	101-77-9	D	18.0	76.0
360	4,4'-Methylene bis(2-chloroaniline)	101-14-4	B2	34.0	150.0
361	4,4'-Methylene bis(N,N'-dimethyl)aniline	101-61-1	B2	97.0	410.0
362	Methylene bromide	74-95-3	D	650.0	6800.0
363	Methylene chloride	75-09-2	B2	77.0	180.0
364	Methyl ethyl ketone	78-93-3	D	7100.0	27000.0
365	Methyl hydrazine	60-34-4	B, C	4.0	17.0
366	Methyl isobutyl ketone	108-10-1	D	770.0	2800.0
367	* Methyl methacrylate	80-62-6	D	760.0	2800.0
368	2-Methyl-5-nitroaniline	99-55-8	C	130.0	580.0
369	Methyl parathion	298-00-0	D	16.0	170.0
370	2-Methylphenol	95-48-7	C	3300.0	34000.0
371	3-Methylphenol	108-39-4	C	3300.0	34000.0
372	4-Methylphenol	106-44-5	C	330.0	3400.0
373	Methyl styrene (mixture)	25013-15-4	D	120.0	520.0
374	* Methyl styrene (alpha)	98-83-9	D	890.0	3100.0
375	Methyl tertbutyl ether (MTBE)	1634-04-4	D	320.0	3300.0
376	Metolacolor (Dual)	51218-45-2	D	9800.0	100000.0
377	Metribuzin	21087-64-9	D	1600.0	17000.0
378	Mirex	2385-85-5	B2	2.5	11.0
379	Molinate	2212-67-1	D	130.0	1400.0
380	Molybdenum	7439-98-7	D	380.0	8500.0
381	Monochloramine N	10599-90-3	D	6500.0	68000.0
382	Naled	300-76-5	D	130.0	1400.0
383	Naphthalene	91-20-3	D	2600.0	27000.0
384	Napropamide	15299-99-7	D	6500.0	68000.0
385	Nickel and compounds	7440-02-0	D	1500.0	34000.0
386	Nickel subsulfide	12035-72-2	A	5100.0	11000.0
387	Nitrapyrin	1929-82-4	D	98.0	1000.0
388	Nitrate	14797-55-8	D	100000.0	1000000.0
389	Nitrite	14797-65-0	D	6500.0	68000.0
390	2-Nitroaniline	88-74-4	D	3.9	41.0
391	Nitrobenzene	98-95-3	D	18.0	94.0
392	Nitrofurantoin	67-20-9	D	4600.0	48000.0
393	Nitrofurazone	59-87-0	B2	3.0	13.0
394	Nitroguanidine	556-88-7	D	6500.0	68000.0
395	N-Nitrosodi-n-butylamine	924-16-3	B2	0.22	0.55

## Department of Environmental Quality – Remedial Action

	<b>Chemical Name</b>	<b>CAS Number</b>	<b>Cancer Group</b>	<b>Residential (mg/kg)</b>	<b>Non-residential (mg/kg)</b>
396	N-Nitrosodiethanolamine	1116-54-7	B2	1.6	6.8
397	N-Nitrosodiethylamine	55-18-5	B2	0.03	0.13
398	N-Nitrosodimethylamine	62-75-9	B2	0.087	0.37
399	N-Nitrosodiphenylamine	86-30-6	B2	910.0	3900.0
400	N-Nitroso di-n-propylamine	621-64-7	B2	0.63	2.7
401	N-Nitroso-N-methylethylamine	10595-95-6	B2	0.20	0.87
402	N-Nitrosopyrrolidine	930-55-2	B2	2.1	9.1
403	m-Nitrotoluene	99-08-1	D	650.0	6800.0
404	p-Nitrotoluene	99-99-0	D	650.0	6800.0
405	Norflurazon	27314-13-2	D	2600.0	27000.0
406	NuStar	85509-19-9	D	46.0	480.0
	<b>O</b>				
407	Octabromodiphenyl ether	32536-52-0	D	200.0	2000.0
408	Octahydro-1357-tetranitro-1357-tetrazocine (HMX)	2691-41-0	D	3300.0	34000.0
409	Octamethylpyrophosphoramidate	152-16-9	D	130.0	1400.0
410	Oryzalin	19044-88-3	C	3300.0	34000.0
411	Oxadiazon	19666-30-9	D	330.0	3400.0
412	Oxamyl	23135-22-0	E	1600.0	17000.0
413	Oxyfluorfen	42874-03-3	D	200.0	2000.0
	<b>P</b>				
414	Paclobutrazol	76738-62-0	D	850.0	8900.0
415	Paraquat	4685-14-7	C	290.0	3100.0
416	Parathion	56-38-2	C	390.0	4100.0
417	Pebulate	1114-71-2	D	3300.0	34000.0
418	Pendimethalin	40487-42-1	D	2600.0	27000.0
419	Pentabromo-6-chloro cyclohexane	87-84-3	C	190.0	830.0
420	Pentabromodiphenyl ether	32534-81-9	D	130.0	1400.0
421	Pentachlorobenzene	608-93-5	D	52.0	550.0
422	Pentachloronitrobenzene	82-68-8	C	17.0	73.0
423	Pentachlorophenol	87-86-5	B2	25.0	79.0
424	Permethrin	52645-53-1	D	3300.0	34000.0
425	Phenmedipham	13684-63-4	D	16000.0	170000.0
426	Phenol	108-95-2	D	39000.0	410000.0
427	m-Phenylenediamine	108-45-2	D	390.0	4100.0
428	p-Phenylenediamine	106-50-3	D	12000.0	130000.0
429	Phenylmercuric acetate	62-38-4	D	5.2	55.0
430	2-Phenylphenol	90-43-7	C	2300.0	9800.0
431	Phorate	298-02-2	E	13.0	140.0
432	Phosmet	732-11-6	D	1300.0	14000.0
433	Phosphine	7803-51-2	D	20.0	200.0
434	Phosphorus, white	7723-14-0	D	1.5	34.0
435	Phthalic anhydride	85-44-9	D	130000.0	1000000.0
436	Picloram	1918-02-1	D	4600.0	48000.0
437	Pirimiphos-methyl	23505-41-1	D	650.0	6800.0
438	Polybrominated biphenyls (PBBs)	N/A	B2	0.46	2.1
439	Polychlorinated biphenyls (PCBs)	1336-36-3	B2	2.5	13.0
440	Potassium cyanide	151-50-8	D	3300.0	34000.0
441	Potassium silver cyanide	506-61-6	D	13000.0	140000.0
442	Prochloraz	67747-09-5	C	30.0	130.0
443	Profluralin	26399-36-0	D	390.0	4100.0
444	Prometon	1610-18-0	D	980.0	10000.0
445	Prometryn	7287-19-6	D	260.0	2700.0
446	Pronamide	23950-58-5	C	4900.0	51000.0
447	Propachlor	1918-16-7	D	850.0	8900.0
448	Propanil	709-98-8	D	330.0	3400.0
449	Propargite	2312-35-8	D	1300.0	14000.0
450	Propargyl alcohol	107-19-7	D	130.0	1400.0
451	Propazine	139-40-2	C	1300.0	14000.0

	Chemical Name	CAS Number	Cancer Group	Residential (mg/kg)	Non-residential (mg/kg)
452	Propham	122-42-9	D	1300.0	14000.0
453	Propiconazole	60207-90-1	D	850.0	8900.0
454	Propylene glycol	57-55-6	D	1000000.0	1000000.0
455	Propylene glycol, monoethyl ether	111-35-3	D	46000.0	480000.0
456	Propylene glycol, monomethyl ether	107-98-2	D	46000.0	480000.0
457	Propylene oxide	75-56-9	B2	19.0	79.0
458	Pursuit	81335-77-5	D	16000.0	170000.0
459	Pydrin	51630-58-1	D	1600.0	17000.0
460	Pyrene	129-00-0	D	2000.0	20000.0
461	Pyridine	110-86-1	D	65.0	680.0
<b>Q</b>					
462	Quinalphos	13593-03-8	D	33.0	340.0
463	Quinoline	91-22-5	C	0.37	1.6
<b>R</b>					
464	RDX (Cyclonite)	121-82-4	C	40.0	170.0
465	Resmethrin	10453-86-8	D	2000.0	20000.0
466	Ronnel	299-84-3	D	3300.0	34000.0
467	Rotenone	83-79-4	D	260.0	2700.0
<b>S</b>					
468	Savey	78587-05-0	D	1600.0	17000.0
469	Selenious Acid	7783-00-8	D	330.0	3400.0
470	Selenium	7782-49-2	D	380.0	8500.0
471	Selenourea	630-10-4	D	330.0	3400.0
472	Sethoxydim	74051-80-2	D	5900.0	61000.0
473	Silver and compounds	7440-22-4	D	380.0	8500.0
474	Silver cyanide	506-64-9	D	6500.0	68000.0
475	Simazine	122-34-9	C	37.0	160.0
476	Sodium azide	26628-22-8	D	260.0	2700.0
477	Sodium cyanide	143-33-9	D	2600.0	27000.0
478	Sodium diethyldithiocarbamate	148-18-5	C	16.0	71.0
479	Sodium fluoroacetate	62-74-8	D	1.3	14.0
480	Sodium metavanadate	13718-26-8	D	65.0	680.0
481	Strontium, stable	7440-24-6	D	46000.0	1000000.0
482	Strychnine	57-24-9	D	20.0	200.0
483	* Styrene	100-42-5	C	3300.0	3300.0
484	Sythane	88671-89-0	D	1600.0	17000.0
<b>T</b>					
485	2,3,7,8-TCDD (dioxin)	1746-01-6	B2	0.000038	0.00024
486	Tebuthiuron	34014-18-1	D	4600.0	48000.0
487	Temephos	3383-96-8	D	1300.0	14000.0
488	Terbacil	5902-51-2	E	850.0	8900.0
489	Terbufos	13071-79-9	D	1.6	17.0
490	Terbutryn	886-50-0	D	65.0	680.0
491	1,2,4,5-Tetrachlorobenzene	95-94-3	D	20.0	200.0
492	1,1,1,2-Tetrachloroethane	630-20-6	C	23.0	54.0
493	1,1,2,2-Tetrachloroethane	79-34-5	C	4.4	11.0
494	Tetrachloroethylene (PCE)	127-18-4	B2	53.0	170.0
495	2,3,4,6-Tetrachlorophenol	58-90-2	D	2000.0	20000.0
496	p,a,a,a-Tetrachlorotoluene	5216-25-1	B2	0.22	0.95
497	Tetrachlorovinphos	961-11-5	C	190.0	790.0
498	Tetraethyldithiopyrophosphate	3689-24-5	D	33.0	340.0
499	Thallic oxide	1314-32-5	D	5.4	120.0
500	Thallium acetate	563-68-8	D	6.9	150.0
501	Thallium carbonate	6533-73-9	D	6.1	140.0
502	Thallium chloride	7791-12-0	D	6.1	140.0
503	Thallium nitrate	10102-45-1	D	6.9	150.0
504	Thallium selenite	12039-52-0	D	6.9	150.0
505	Thallium sulfate	7446-18-6	D	6.1	140.0
506	Thiobencarb	28249-77-6	D	650.0	6800.0

## Department of Environmental Quality – Remedial Action

	<b>Chemical Name</b>	<b>CAS Number</b>	<b>Cancer Group</b>	<b>Residential (mg/kg)</b>	<b>Non-residential (mg/kg)</b>
507	2-(Thiocyanomethylthio)- benzothiazole (TCMTB)	3689-24-5	D	2000.0	20000.0
508	Thiofanox	39196-18-4	D	20.0	200.0
509	Thiophanate-methyl	23564-05-8	D	5200.0	55000.0
510	Thiram	137-26-8	D	330.0	3400.0
511	Tin and compounds	7440-31-5	D	46000.0	1000000.0
512	* Toluene	108-88-3	D	790.0	2700.0
513	Toluene-2,4-diamine	95-80-7	B2	1.4	6.0
514	Toluene-2,5-diamine	95-70-5	D	39000.0	410000.0
515	Toluene-2,6-diamine	823-40-5	C	13000.0	140000.0
516	p-Toluidine	106-49-0	C	23.0	100.0
517	Toxaphene	8001-35-2	B2	4.0	17.0
518	Tralomethrin	66841-25-6	D	490.0	5100.0
519	Triallate	2303-17-5	D	850.0	8900.0
520	Triasulfuron	82097-50-5	D	650.0	6800.0
521	1,2,4-Tribromobenzene	615-54-3	D	330.0	3400.0
522	Tributyltin oxide (TBTO)	56-35-9	D	2.0	20.0
523	2,4,6-Trichloroaniline	634-93-5	C	130.0	560.0
524	2,4,6-Trichloroaniline hydrochloride	33663-50-2	C	150.0	660.0
525	* 1,2,4-Trichlorobenzene	120-82-1	D	570.0	4700.0
526	* 1,1,1-Trichloroethane	71-55-6	D	1200.0	4800.0
527	1,1,2-Trichloroethane	79-00-5	C	6.5	15.0
528	Trichloroethylene (TCE)	79-01-6	B2	27.0	70.0
529	Trichlorofluoromethane	75-69-4	D	380.0	1300.0
530	2,4,5-Trichlorophenol	95-95-4	D	6500.0	68000.0
531	2,4,6-Trichlorophenol	88-06-2	B2	400.0	1700.0
532	2,4,5-Trichlorophenoxyacetic acid	93-76-5	D	650.0	6800.0
533	2-(2,4,5-Trichlorophenoxy) propionic acid	93-72-1	D	520.0	5500.0
534	1,1,2-Trichloropropane	598-77-6	D	15.0	50.0
535	1,2,3-Trichloropropane	96-18-4	B2	0.014	0.03
536	1,2,3-Trichloropropene	96-19-5	D	11.0	38.0
537	* 1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	D	10000.0	10000.0
538	Tridiphane	58138-08-2	D	200.0	2000.0
539	Triethylamine	121-44-8	D	23.0	84.0
540	Trifluralin	1582-09-8	C	490.0	2500.0
541	Trimethyl phosphate	512-56-1	B2	120.0	520.0
542	1,3,5-Trinitrobenzene	99-35-4	D	3.3	34.0
543	Trinitrophenylmethylnitramine	479-45-8	D	650.0	6800.0
544	2,4,6-Trinitrotoluene	118-96-7	C	33.0	340.0
	<b>V</b>				
545	Vanadium	7440-62-2	D	540.0	12000.0
546	Vanadium pentoxide	1314-62-1	D	690.0	15000.0
547	Vanadium sulfate	13701-70-7	D	1500.0	34000.0
548	Vernam	1929-77-7	D	65.0	680.0
549	Vinclozolin	50471-44-8	D	1600.0	17000.0
550	Vinyl acetate	108-05-4	D	780.0	2600.0
551	Vinyl bromide	593-60-2	B2	1.9	4.1
552	Vinyl chloride	75-01-4	A	0.016	0.035
	<b>W</b>				
553	Warfarin	81-81-2	D	20.0	200.0
	<b>X</b>				
554	* Xylene (mixed)	1330-20-7	D	2800.0	2800.0
	<b>Z</b>				
555	Zinc	7440-66-6	D	23000.0	510000.0
556	Zinc phosphide	1314-84-7	D	23.0	510.0
557	Zinc cyanide	557-21-1	D	3300.0	34000.0
558	Zineb	12122-67-7	D	3300.0	34000.0

\* = 1% free-phase analysis

# = Based on IEUBK Model

~ = Based on natural background

N/A = Not Applicable

**CARCINOGENICITY CLASSIFICATIONS:**

A = Known human carcinogen

B1 = Probable human carcinogen, with limited data indicating human carcinogenicity.

B2 = Probable human carcinogen, with inadequate or no evidence of carcinogenicity in humans. Sufficient evidence for carcinogenicity in laboratory animals.

C = Possible human carcinogen.

D = Not classifiable as to human carcinogenicity.

E = Evidence of noncarcinogenicity in humans.

**Historical Note**

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency appendix reinstated at the request of the Department; historical note from Supp. 97-3 stating emergency expired removed for clarity. Appendix B adopted permanently effective December 4, 1997, replacing emergency appendix (Supp. 97-4). Former Appendix B repealed; new Appendix B renumbered from Appendix A and amended by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

**Appendix C. Repealed**

**Historical Note**

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Interim emergency appendix reinstated at the request of the Department; historical note from Supp. 97-3 stating emergency expired removed for clarity. Appendix C adopted permanently effective December 4, 1997, replacing emergency appendix (Supp. 97-4). Appendix C repealed by final rulemaking at 13 A.A.R. 971, effective May 5, 2007 (Supp. 07-1).

**Appendix D. Emergency Expired**

**Historical Note**

Adopted by emergency action effective March 29, 1996, pursuant to A.R.S. § 41-1026 and Laws 1995, Ch. 232, § 5; in effect until permanent rules are adopted and in place no later than August 1, 1997, pursuant to A.R.S. § 49-152 and Laws 1995, Ch. 232, § 5 (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1). Historical note from Supp. 97-3 stating emergency expired removed for clarity; interim emergency rule reinstated at the request of the Department. Emergency expired effective December 4, 1997 (Supp. 97-4).

**ARTICLE 3. PROSPECTIVE PURCHASER AGREEMENT**

**R18-7-301. Prospective Purchaser Agreement Fee**

- A.** An applicant for a prospective purchaser agreement with the Department under A.R.S. § 49-285.01 shall pay to the Department the fee prescribed in this Article. The Department shall not refund a fee once it accepts an application.
- B.** An applicant for a prospective purchaser agreement shall pay a fee for each prospective purchaser agreement application submitted to the Department for review. The fee includes:
1. An initial charge as prescribed in subsection (C);
  2. An hourly charge, if the conditions of subsection (D)(1) apply;
  3. The publication costs for the legal notice as prescribed in subsection (F); and
  4. A charge, as prescribed in subsection (D)(2), if an applicant requests a settlement.
- C.** An applicant shall pay an initial charge of \$2,500 for an application for a prospective purchaser agreement requiring minimal review for property within a site that is listed in the Water Quality Assurance Revolving Fund (WQARF) registry under A.R.S. § 49-287.01. For property that is not on the WQARF registry, an applicant shall pay an initial charge of \$3,600 for an application for a prospective purchaser agreement. The initial charge covers direct and indirect Department costs. An application for a prospective purchaser agreement requiring minimal review is one that requires 34 or fewer hours of review time for a site on the WQARF registry or 49 or fewer hours for a site not on the WQARF registry.
- D.** In addition to the initial charge described in subsection (C), the applicant shall pay the following charges, if applicable:

1. An hourly charge for reviewing a prospective purchaser agreement that requires more than the hours for review covered by the initial charge in subsection (C). The additional charge is \$73 per hour for Department staff time and Assistant Attorney General time.
  2. A charge in the amount of \$2,000, to accompany a request for a settlement that includes immunity from contribution claims for existing contamination, if requested under A.R.S. § 49-285.01. If costs for the settlement exceed \$2,000, the remainder of the costs will be paid for through the terms of the settlement.
- E.** The applicant may agree in writing to pay charges that exceed the initial charge described in subsection (C). Unless the applicant has so agreed, when the Department believes that the costs associated with the prospective purchaser agreement have begun to exceed the initial charge, the Department shall stop work on the prospective purchaser agreement and notify the applicant in writing. The applicant shall notify the Department in writing, within 30 days of the Department's notification under this subsection, whether the applicant wishes the Department to continue work on the application and to incur additional costs. The Department shall terminate the application if the applicant does not provide written confirmation within 30 days that it wishes the Department to continue work on the application.
- F.** The Department shall publish a legal notice announcing an opportunity for public comment on the prospective purchaser agreement. The legal notice shall include:
1. A general description of the contents of the agreement;

2. The location where information regarding the agreement can be obtained;
  3. The name and address of the Department contact where comments may be sent; and
  4. The time and date that the comment period closes.
- G.** The initial charge described in subsection (C) is due when the applicant submits the prospective purchaser agreement application to the Department. The publication cost specified in subsection (B)(3), and any hourly charge described in subsection (D)(1), are due within 30 days of the date the invoice is sent by the Department. Fee charges are payable to the state of Arizona, and shall be paid in full before the Department executes a prospective purchaser agreement.

#### Historical Note

Adopted effective February 7, 1997; filed with the Office of the Secretary of State January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 12 A.A.R. 345, effective March 11, 2006 (Supp. 06-1).

*Editor's Note: The heading for the following Article was amended by exempt rulemaking at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).*

*Editor's Note: The following Article was originally adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1997, Ch. 296, §§ 3(E) & (G), 10 & 11. Although exempt from certain provisions of the rulemaking process, the Department was required to submit notice of proposed rulemaking with the Secretary of State for publication in the Arizona Administrative Register and conduct a public hearing (Supp. 97-3).*

#### ARTICLE 4. REPEALED

##### R18-7-401. Repealed

#### Historical Note

Adopted effective August 5, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1997, Ch. 296, §§ 3(E) & (G), 10 & 11 (Supp. 97-3). Section R18-7-401 repealed; new Section R18-7-401 adopted effective October 21, 1998 (Supp. 98-4). Repealed by final rulemaking at 15 A.A.R. 232, effective March 7, 2009 (Supp. 09-1).

*Editor's Note: The rules in the following Article were adopted as interim rules under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 2000, Ch. 225, § 13. Although exempt from certain provisions of the rulemaking process, the Department is required to submit notice of proposed rulemaking with the Secretary of State for publication in the Arizona Administrative Register and conduct a public hearing (Supp. 01-1).*

#### ARTICLE 5. VOLUNTARY REMEDIATION PROGRAM

##### R18-7-501. Definitions

The following definitions shall apply in this Article, unless the context otherwise requires:

“Applicant” means a person who participates in the Voluntary Remediation Program. Participation in the Voluntary Remediation Program begins when the Department receives an application under A.R.S. § 49-173 and continues until any one of the following occurs:

The Department grants the applicant’s request for a no further action determination.

The applicant provides the Department with notice of the applicant’s intent to withdraw from the program.

The Department terminates the applicant’s participation under A.R.S. § 49-178(B).

“Department” means the Arizona Department of Environmental Quality.

“Voluntary Remediation Program” means the program authorized under A.R.S. Title 49, Chapter 1, Article 5.

#### Historical Note

New Section adopted as interim rules, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 2000, Ch. 225, § 13, at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).

##### R18-7-502. Application Fee

- A.** At the time of filing an application to participate in the Voluntary Remediation Program, the applicant shall pay a nonrefundable application fee in the amount of \$2,000.00.
- B.** The application fee shall be in the form of a company check, cashier’s check, certified check, or money order made payable to the Arizona Department of Environmental Quality.
- C.** Except as provided in subsection (D), an application does not meet the requirements in A.R.S. § 49-173 unless accompanied by the application fee. The Department shall not review an application until the application fee is paid in full.
- D.** At the request of an applicant that is a small business as defined under A.R.S. § 41-1001, the Department may review and approve an application upon receipt of a partial payment of the application fee in an amount approved by the Department and an agreement to pay the remainder of the fee in scheduled installments.
- E.** An applicant that withdraws or is terminated from participation in the Voluntary Remediation Program may reapply to the program by submitting an application that meets the requirements of A.R.S. § 49-173, including payment of the application fee.

#### Historical Note

New Section adopted as interim rules, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 2000, Ch. 225, § 13, at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).

##### R18-7-503. Deposit

- A.** At the time that an applicant submits a work plan under A.R.S. § 49-175 or a report under A.R.S. § 49-181, the applicant shall submit to the Department an initial deposit of \$4,000.00.
- B.** The deposit shall be in the form of a company check, cashier’s check, certified check, or money order made payable to the Arizona Department of Environmental Quality.
- C.** The Department shall begin review of the applicant’s work plan or the report submitted under A.R.S. § 49-181 upon receipt of the initial deposit.
- D.** Upon receipt of the initial deposit, the Department shall establish a site-specific deposit account identified by a unique account number. The Department shall charge all incurred reimbursable costs attributable to the applicant’s site against the site-specific deposit account.
- E.** If, at any time during the applicant’s participation in the program, the balance in the site-specific deposit account falls below \$1,000.00 and the Department reasonably estimates that the reimbursable costs chargeable to the account will exceed the amount available in the account, the Department shall mail or fax a written request that the applicant submit an additional deposit in an amount not to exceed \$4,000.00. The Department may request any number of additional deposits, in amounts of \$4,000.00 or less, at any time that the conditions of this subsection are met.

F. If any requested additional deposit is not received within 30 days after the Department mails or faxes the request in subsection (E) and the Department determines that the applicant's site specific account balance is insufficient to support continued program participation, the Department shall mail a written notice of deficiency under A.R.S. § 49-178 and shall notify the applicant that work on the site may be suspended until the additional deposit is received. If the Department does not receive the requested additional deposit within 60 days after the notice of deficiency is mailed or faxed and the applicant does not dispute the Department's determination that the site specific account balance is insufficient to support continued program participation, the Department may terminate the applicant's participation in the program. An applicant whose participation is terminated under this subsection may reapply to the program as provided in R18-7-502(E).

#### Historical Note

New Section adopted as interim rules, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 2000, Ch. 225, § 13, at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).

#### R18-7-504. Voluntary Remediation Program Reimbursement

A. The applicant shall reimburse the Department, at an hourly reimbursement rate established under R18-7-505, for time spent by Voluntary Remediation Program staff on activities specifically related to the applicant's site, including the following:

1. Review of the application submitted under A.R.S. § 49-173, including review of any modifications requested by the Department or the applicant or additional information submitted by the applicant.
2. Review of the work plan submitted under A.R.S. § 49-175, including review of any modifications requested by the Department under A.R.S. § 49-177 or by the applicant or the Department under A.R.S. § 49-180.
3. Review of progress reports submitted as part of a work plan under A.R.S. § 49-175 or as requested by the Department under A.R.S. § 49-177 or A.R.S. § 49-180.
4. Consideration by the Department under A.R.S. § 49-176(D) of written comments submitted in response to a public notice providing an opportunity to comment or a public meeting.
5. Participation in public hearings required by the Department under A.R.S. § 49-176(D).
6. Site inspections under A.R.S. § 49-177 and site investigations under A.R.S. § 49-181, including time spent in travel to and from the site.
7. Review of the report and request for a no further action determination submitted under A.R.S. § 49-181, including review of any modifications requested by the applicant or the Department.
8. Time spent in reviewing a request submitted by an applicant under A.R.S. § 49-182 for approval of a remedial action under A.R.S. § 49-285.
9. Time spent in meetings or discussions requested by the applicant or the Department.

B. The applicant shall reimburse the Department for the site-specific costs of goods and services contracted by the Department including:

1. Reasonable and necessary attorneys' fees billed to the Department by the Attorney General for legal services, including legal fees billed for representation in regard to appeals or dispute resolution under A.R.S. § 49-185.

2. Costs incurred by the Department for work provided under a contract described in A.R.S. § 49-179(D)(1) or A.R.S. § 49-179(D)(2).
3. Reasonable and necessary travel costs incurred in the performance of activities described in subsections (A)(5), (A)(6), or (A)(9) or performed at the request of the applicant.
4. Other reasonable site related expenses documented in writing by the Department.

#### Historical Note

New Section adopted as interim rules, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 2000, Ch. 225, § 13, at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).

#### R18-7-505. Hourly Reimbursement Rate

The hourly reimbursement rate is \$110.00 per hour.

#### Historical Note

New Section adopted as interim rules, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 2000, Ch. 225, § 13, at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).

#### R18-7-506. Voluntary Remediation Program Accounting

Within a reasonable time after the end of each calendar quarter, the Department shall mail or fax each applicant a statement itemizing reimbursable costs charged against the site-specific deposit account and a summary of account activity during that quarter. The statement shall be in a form consistent with generally accepted accounting principles.

#### Historical Note

New Section adopted as interim rules, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 2000, Ch. 225, § 13, at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).

#### R18-7-507. Account Reconciliation

A. Within a reasonable time after completion of the remediation work at the site, or after termination or withdrawal of the applicant from participation in the program, the Department shall prepare and mail or fax to the applicant a final statement which shall include:

1. An itemization of site-specific reimbursable costs incurred by the Department but not previously reported in a quarterly statement.
2. The total amount of site-specific reimbursable costs incurred by the Department during the course of the project, including the costs reported in subsection (A)(1).
3. The total amount submitted as deposits by the applicant and applied by the Department to the applicant's site-specific deposit account during the course of the project, plus the amount paid by the applicant as an application fee.

B. If the final statement shows that the amounts submitted or paid during the course of the project are less than the Department's reimbursable costs, the applicant shall be responsible for and shall pay, within 30 days after receipt of the final statement, the difference between the costs incurred and the amounts submitted or paid.

C. If the final statement shows that the amounts submitted or paid during the course of the project are more than the Department's reimbursable costs and the Department's reimbursable costs exceed \$2,000.00, the Department shall return to the applicant, within a reasonable time period, the difference between the amounts submitted or paid and the costs incurred.

D. If the final statement shows that the amounts submitted or paid during the course of the project are more than the Depart-

ment's reimbursable costs and the Department's reimbursable costs total \$2,000.00 or less, the Department shall retain the applicant's nonrefundable application fee of \$2,000.00 and shall return to the applicant the amount of any deposits submitted.

- E. The Department may withhold any program approval or no further action determination until the applicant has paid any amount due and payable under the final statement.

#### Historical Note

New Section adopted as interim rules, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 2000, Ch. 225, § 13, at 7 A.A.R. 814, effective February 9, 2001 (Supp. 01-1).

### ARTICLE 6. DECLARATION OF ENVIRONMENTAL USE RESTRICTION FEE

*Article 6, consisting of R18-7-601 through R18-7-606, made by exempt rulemaking at 10 A.A.R. 573, effective February 20, 2004 (Supp. 04-1).*

#### R18-7-601. Definitions

The following definitions shall apply in this Article, unless the context otherwise requires:

“APP mine sites” means mining facilities which are subject to the aquifer protection permit provisions of Arizona Revised Statutes Title 49, Chapter 2, Article 3.

“Department” means the Arizona Department of Environmental Quality.

“DEUR” means declaration of environmental use restriction, as described in A.R.S. §§ 49-152 and 49-158. It is an institutional control and a restrictive covenant that runs with and burdens the property, binds the owner and the owner's heirs, successors and assigns, and inures to the benefit of the Department and the state.

“Fee” means the fee authorized by A.R.S. §§ 49-152(K) and 49-158(G).

“Engineering control” has the meaning in A.R.S. § 49-151.

“Institutional control” has the meaning in A.R.S. § 49-151.

“Modification” means modification of a DEUR that continues to address the same spill or release, and the same contaminants, as in the original DEUR. No other changes are considered a modification of a DEUR, but would be the subject of a separate DEUR.

“One-time activities” includes reviewing and/or approving legal descriptions, control areas, contaminants, institutional or engineering controls, and draft DEUR documents.

“Ongoing activities” includes reviewing written reports, conducting site inspections, or otherwise verifying maintenance of institutional or engineering controls.

“Underground storage tanks” means those underground storage tanks defined and regulated under A.R.S. Title 49, Chapter 6, Article 1.

“WQARF sites” means sites that are listed on the site registry specified in A.R.S. § 49-287.01 and are the subject of remedial action pursuant to A.R.S. Title 49, Chapter 2, Article 5. A property that is within a registry site boundary, but does not involve a contaminant of concern identified for that registry site and is not the subject of remedial action pursuant to the above Chapter 2, is not a WQARF site for the purpose of this Section.

#### Historical Note

New Section made by exempt rulemaking at 10 A.A.R.

573, effective February 20, 2004 (Supp. 04-1).

#### R18-7-602. Applicability

The provisions of this Article apply to properties where the owner has elected to use an institutional control and/or an engineering control to reduce the potential for exposure to contaminants on the property, or to leave contamination on the property that exceeds the applicable residential soil standard for the property. The owner of such property shall record, in each county where the property is located, a restrictive covenant labeled “declaration of environmental use restriction,” that contains the information required by A.R.S. §§ 49-152 or 49-158, as approved by the Department. The owner shall submit the information on a form provided by the Department.

#### Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 573, effective February 20, 2004 (Supp. 04-1).

#### R18-7-603. Fee

Except as provided in R18-7-605, before recording the DEUR or DEUR modification, property owners shall pay to the Department a fee as provided in R18-7-604 by company, cashier, or certified check, or money order, or other method approved by the Department.

#### Historical Note

New Section made by exempt rulemaking at 10 A.A.R. 573, effective February 20, 2004 (Supp. 04-1).

#### R18-7-604. Fee Calculation

- A. Property owners who use only an institutional control shall pay to the Department a fee that is the sum of the following:
1. \$825, representing Department costs to perform one-time activities;
  2. An amount representing the costs of ongoing activities performed by the Department that is one of the following:
    - a. For properties contaminated only by a petroleum release from one or more underground storage tanks: \$110 multiplied by the number of years the Department projects the property will require ongoing activities, not to exceed 30 years; or
    - b. For all other properties: \$220 multiplied by the number of years the Department projects the property will require ongoing activities, not to exceed 30 years;
  3. \$770, representing Department costs to review and render a decision on a request to release a DEUR, and to record the release, pursuant to A.R.S. §§ 49-152(D) or 49-158(L);
  4. \$1,985 per site, representing the property owner's pro-rata share of Department costs to oversee and coordinate its DEUR-related activities; plus
  5. \$550 per site, representing the property owner's pro-rata share of Department costs to administer the repository under A.R.S. § 49-152(E).
- B. Property owners who use an engineering control without groundwater monitoring shall pay a fee to the Department that is the sum of the following:
1. \$1,595, representing Department costs to perform one-time activities;
  2. \$660, representing Department costs of annual ongoing activities, multiplied by the number of years the Department projects the property will require ongoing activities, not to exceed 30 years;
  3. \$1,320, representing Department costs to review and render a decision on a request to release a DEUR, and to record the release, pursuant to A.R.S. §§ 49-152(D) or 49-158(L);

4. \$1,985 per site, representing the property owner's pro-rata share of Department costs to oversee and coordinate its DEUR-related activities; plus
  5. \$550 per site, representing the property owner's pro-rata share of Department costs to administer the repository under A.R.S. § 49-152(E).
- C.** Property owners who use an engineering control with ground-water monitoring, and owners of WQARF sites and APP mine sites, shall pay to the Department a fee that is the sum of the following:
1. \$3,740, representing Department costs for performing one-time activities;
  2. A component of the fee to be determined on a case-by-case basis, at \$55 per hour, based on both:
    - a. The number of hours per year that the Department projects will be required for ongoing activities performed by the Department for the property, not to exceed 70 hours per year; and
    - b. The number of years that the Department projects the property will require ongoing activities, not to exceed 30 years;
  3. \$1,870, representing Department costs to review and render a decision on a request to release a DEUR, and to record the release, pursuant to A.R.S. §§ 49-152(D) or 49-158(L);
  4. \$1,985 per site, representing the property owner's pro-rata share of Department costs to oversee and coordinate its DEUR-related activities; plus
  5. \$550 per site, representing the property owner's pro-rata share of Department costs to administer the repository under A.R.S. § 49-152(E).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 573, effective February 20, 2004 (Supp. 04-1).

**R18-7-605. Postponement of the Release Portion of the DEUR Fee**

Property owners may elect to postpone payment of the portion of the fee to release the DEUR, described in R18-7-604(A)(3), R18-7-604(B)(3), or R18-7-604(C)(3), on the condition that payment of the reasonable and necessary costs of releasing the DEUR is made with the request to the Department to release the DEUR from the property. Property owners electing to use this option acknowledge that the future amount of the release portion of the DEUR fee will be the amount established by this Article at the time the request for the release of the DEUR is filed with the Department, which may be greater than the amount described in R18-7-604(A)(3), R18-7-604(B)(3), or R18-7-604(C)(3) at the time the DEUR is recorded.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 573, effective February 20, 2004 (Supp. 04-1).

**R18-7-606. DEUR Modification Fee**

A property owner who wishes to request a modification to an existing DEUR pursuant to A.R.S. §§ 49-152(I)(2), 49-152(J)(2), 49-158(E), or 49-158(F) shall pay to the Department a fee, representing Department costs to review and render a decision on the request to modify the DEUR. The fee shall accompany the proposed modification, and shall be in the form of company, cashier, or certified check, or money order, or other method approved by the Department. The fee shall be the amount specified in R18-7-604(A)(3), R18-7-604(B)(3), or R18-7-604(C)(3), as appropriate for the category of site as described in R18-7-604(A), R18-7-604(B), or R18-7-604(C).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 573, effective February 20, 2004 (Supp. 04-1).

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

#### 49-104. Powers and duties of the department and director

##### A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

#### 49-152. Soil remediation standards; restrictions on property use

A. Notwithstanding any other remediation levels established under this title, the director shall approve remediation levels calculated in accordance with this subsection and shall accomplish the following for remediation of contaminated soil to protect public health and the environment in accordance with the applicable provisions of this title and section 33-434.01:

1. Establish predetermined risk based standards by rule. At a minimum, separate standards shall be established for residential and nonresidential exposure assumptions. Until risk based remediation standards are formally established by rule, the director shall establish interim standards adopting:

(a) The Arizona health based guidance levels developed by the department of health services to include a health based standard for total petroleum hydrocarbons as the standards for residential uses.

(b) The guidance levels in subdivision (a) of this paragraph modified to reflect the United States environmental protection agency published assumptions for exposures that are not residential as the standards for nonresidential uses. The initial adoption of these interim standards shall be effective by December 15, 1995 and shall be deemed emergency rules pursuant to section 41-1026.

2. Issue guidance on methods for calculating case-by-case, site specific risk based remediation levels in accordance with risk assessment methodologies that are accepted in the scientific community and shall not preclude the use of newly developed risk assessment methodologies that are accepted in the scientific community.

B. The owner of a property may elect to remediate the property to meet a site specific residential or nonresidential risk based remediation standard or a predetermined residential or nonresidential risk based remediation standard. The property is suitable for unrestricted use if it has been remediated without the use of engineering or institutional controls to meet either of the following:

1. The predetermined residential risk based remediation standard.

2. A site specific risk based hazard index equal to or less than one or a risk of carcinogenic health effects that is less than or equal to the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2), based on residential exposure.

C. If the owner has elected to use an engineering or institutional control to meet the standards prescribed in subsection B of this section, or if the owner has elected to leave contamination on the property that exceeds the applicable residential standard for the property at a site remediated under programs, settlements or orders administered by the department under this title, the owner shall record in each county where the property is located an institutional control that consists of a restrictive covenant that is labeled "declaration of environmental use restriction" pertaining to the area of the property necessary to protect the public health and the environment. A person who is conducting a remedial action, remediation, corrective action or response action that requires an institutional or engineering control and who is not the owner of the property shall obtain written consent from the owner before implementing the institutional control or constructing the engineering control. On implementation of the institutional or engineering control, the owner shall record a declaration of environmental use restriction in each county where the property is located. If the institutional control or engineering control will affect right-of-way that is owned, maintained or controlled by a public entity for public benefit, the person shall also obtain the public entity's written consent before implementing the institutional control or constructing the engineering control. The declaration of environmental use restriction shall limit by legal description:

1. The area of the property where the institutional control or engineering control shall be maintained.

2. The area of the property to be restricted to nonresidential use, because contamination remains on the property above the standards prescribed in subsection B, paragraph 1 or 2 of this section.

D. At the written request of the owner of property that is subject to a declaration of environmental use restriction, the director shall determine whether release or modification of the declaration of environmental use restriction is appropriate. If a release has been requested, the director shall make this determination within sixty days after the date of the property owner's request. If the director determines that release of the declaration of environmental use restriction is appropriate, the director shall record in each county where the property is located a notice releasing the declaration of environmental use restriction. The declaration of environmental use restriction is perpetual unless released pursuant to this section. The director shall determine that release of a declaration of environmental use restriction is appropriate if the property has been remediated, without the use of institutional controls or engineering controls, to either:

1. Meet predetermined risk based remedial standards for residential exposure assumptions.
2. Present a risk based hazard index equal to or less than one from noncancer health effects and a risk estimate of carcinogenic health effects equal to or less than the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2).

E. The department shall establish a repository in the department listing sites remediated under programs administered by the department under this title. The repository shall include the name and address of the owner of the property, when the remediation was conducted, the legal description and street address of the property, the applicability of section 33-434.01, the type of financial assurance mechanism that is being used, if applicable, and a description of the purpose of the declaration of environmental use restriction.

F. When recorded, an owner's declaration of environmental use restriction under subsection B of this section is a covenant that runs with and burdens the property, binds the owner and the owner's heirs, successors and assigns and inures to the benefit of the department and the state. If notice of the declaration of environmental use restriction that includes a specific description of the area of the property that is subject to the declaration of environmental use restriction is contained in the repository maintained by the department pursuant to subsection E of this section, a declaration of environmental use restriction may not be extinguished, limited or impaired through any of the following:

1. Sale of a real property tax lien.
2. Foreclosure of a tax lien.
3. Foreclosure of any mortgage, deed of trust or other encumbrance or lien on the property.
4. Adverse possession.
5. Exercise of eminent domain.
6. Application of the doctrine of abandonment, the doctrine of waiver or any other common law doctrine.

G. Each party to a declaration of environmental use restriction shall incorporate the terms of the declaration of environmental use restriction into any lease, license or other agreement that is signed by the party and that grants a right with respect to the property that is subject to the declaration of environmental use restriction. The incorporation may be in full or by reference.

H. A declaration of environmental use restriction is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.
2. The date that remediation was completed and a map of the area of the property that is subject to the declaration.
3. A description of the environmental contaminants that were the subject of the remediation, remedial action, corrective action or response action.

4. A statement that more detailed information is available at the department, including the address at which that information will be maintained.
5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.
6. The notarized signature of the owner.

I. If institutional controls are used in addition to a declaration of environmental use restriction to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect public health and the environment.
2. A statement indicating that if any person desires to cancel or modify the institutional control in the future, the person must obtain prior written approval from the department pursuant to this section.
3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that institutional controls are being maintained.

J. If engineering controls are used to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement of all requirements for maintenance of the engineering control including a description of the control, the date it was constructed and the reason it must remain in place to protect public health and the environment.
2. A statement that if any person desires to change the engineering controls in the future that person shall obtain prior written approval from the department.
3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that engineering controls are being maintained.
4. A brief description of the engineering control plan and financial assurance mechanism prescribed by section 49-152.01, if applicable.

K. When the declaration of environmental use restriction is recorded or modified, an owner electing to use institutional or engineering controls to satisfy the requirements of this section shall pay the department a fee established by rule. If the control is an institutional control, the owner shall submit to the department a written report once each calendar year regarding the status of the institutional control. If the control is an engineering control, the owner shall maintain the engineering control on the property to ensure that it continues to protect public health and the environment and shall inspect each engineering control at least once each calendar year. Within thirty days after each inspection, the owner shall submit to the department a written report that:

1. Describes the condition of the engineering control.
2. States the nature and cost of all restoration made to the engineering control during the calendar year.
3. Includes current photographs of the engineering control.
4. Describes the status of the financial assurance mechanism prescribed by section 49-152.01, if applicable, and a certification that the financial assurance mechanism is being maintained.

L. The department shall provide a copy of the declaration of environmental use restriction to the local jurisdiction with zoning and development plan approval for the property. The receipt of this copy does not create any new obligation or confer additional powers on the local jurisdiction. A declaration of environmental use restriction does not authorize a use of property that is otherwise prohibited by zoning ordinances or other ordinances or laws. A declaration of environmental use restriction may include activity limitations and use restrictions that would otherwise be permitted by zoning ordinances or other ordinances or laws.

M. The department shall adopt rules as necessary to implement this section. These rules may be combined with any rules necessary to implement section 49-158.

N. The department may enter on the property at all reasonable times to assess the condition of each engineering control. When the department enters on property to assess the condition of an engineering control, the department shall:

1. Provide twenty-four hours' advance notice of the entry to the property owner, if practicable.
2. Allow the owner or an authorized representative of the owner to accompany the department representative.
3. Present photographic identification on entry of the property.
4. Provide the owner or an authorized representative of the owner with notice of the right to have a duplicate sample or split of any sample taken during the inspection if the duplicate or split of any sample would not prohibit an analysis from being conducted or render an analysis inconclusive.

O. Nothing in this section shall preclude the department from initiating an action under other provisions of state or federal law.

#### 49-158. Restrictions on property use; enforcement of engineering and institutional controls

A. Notwithstanding any other provisions of this title, if a remedial action, remediation or corrective action performed pursuant to this title or a response action performed pursuant to CERCLA as defined in section 49-201 includes an institutional control or an engineering control and the remedial action, remediation, corrective action or response action is not subject to section 49-152, the owner of the property on which the institutional control or engineering control is located, on implementation of the institutional control or on construction of the engineering control, shall record in each county where the property is located a restrictive covenant that is labeled "declaration of environmental use restriction". A person who is conducting a remedial action, remediation, corrective action or response action that requires an institutional or engineering control and who is not the owner of the property shall obtain written consent from the owner before implementing the institutional control or constructing the engineering control. On implementation of the institutional control or construction of the engineering control, the owner shall record a declaration of environmental use restriction in each county where the property is located. If the institutional control or engineering control will affect right-of-way that is owned, maintained or controlled by a public entity for public benefit, the person shall also obtain the public entity's written consent before implementing the institutional control or constructing the engineering control. The declaration of environmental use restriction shall limit by legal description the area of the property where the institutional control or engineering control shall be maintained.

B. When recorded, an owner's declaration of environmental use restriction under subsection A of this section is a covenant that runs with and burdens the property, binds the owner and the owner's heirs, successors and assigns and inures to the benefit of the department and the state. If notice of the declaration of environmental use restriction that includes a specific description of the area of the property that is subject to the declaration of environmental use restriction is contained in the repository maintained by the department pursuant to section 49-152, subsection E, a declaration of environmental use restriction may not be extinguished, limited or impaired through any of the following:

1. Issuance of a tax deed.
2. Foreclosure of a tax lien.
3. Foreclosure of any mortgage, deed of trust or other encumbrance or lien on the property.
4. Adverse possession.
5. Exercise of eminent domain.
6. Application of the doctrine of abandonment, the doctrine of waiver or any other common law doctrine.

C. Each party to a declaration of environmental use restriction shall incorporate the terms of the declaration of environmental use restriction into any lease, license or other agreement that is signed by the party and that grants a right with respect to the property that is subject to the declaration of environmental use restriction. The incorporation may be in full or by reference.

D. A declaration of environmental use restriction is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.
2. The date that remediation, remedial action, corrective action or response action was completed and a map of the area of the property that is subject to the declaration.
3. A description of the environmental contaminants that were the subject of the remediation, remedial action, corrective action or response action.

4. A statement that more detailed information is available at the department including the address at which that information will be maintained.

5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.

6. The notarized signature of the owner or owners of the property.

E. If institutional controls are used in addition to the declaration of environmental use restriction, the declaration of environmental use restriction, in addition to the information required by subsection D of this section, shall include the same elements required pursuant to section 49-152, subsection I.

F. If engineering controls are used, the declaration of environmental use restriction, in addition to the information required by subsection D of this section, shall include the same elements required pursuant to section 49-152, subsections F through J and section 49-152.01.

G. When a declaration of environmental use restriction is recorded or modified, an owner shall pay to the department a fee established by rule. The owner shall follow the same requirements for institutional controls and engineering controls pursuant to section 49-152, subsection K and section 49-152.01.

H. The department shall provide a copy of the declaration of environmental use restriction to the local jurisdiction with zoning and development plan approval for the property. A declaration of environmental use restriction does not authorize a use of property that is otherwise prohibited by zoning ordinances or other ordinances or laws. A declaration of environmental use restriction may include activity limitations and use restrictions that would otherwise be permitted by zoning ordinances or other ordinances or laws. The receipt of this copy does not create any new obligation or confer additional powers on the local jurisdiction.

I. The department may enter the property pursuant to section 49-152. The department may also enforce this section as prescribed by section 49-152.02.

J. The department shall adopt rules as necessary to implement this section.

K. When the department enters on property pursuant to this section to verify that engineering controls are being maintained, the department shall meet the same requirements pursuant to section 49-152, subsection N.

L. At the written request of the owner of property that is subject to a declaration of environmental use restriction recorded pursuant to subsection A of this section, the director shall determine whether release or modification of the declaration of environmental use restriction is appropriate. If a release has been requested, the director shall make this determination within sixty days after the date of the property owner's request. If the director determines that release of a declaration of environmental use restriction is appropriate, the director shall record in each county where the property is located a notice releasing the declaration of environmental use restriction. Release by the director under this subsection is appropriate if maintenance of the institutional control or engineering control is no longer necessary to protect public health and the environment.

M. Nothing in this section shall preclude the department from initiating an action under other provisions of state or federal law.

49-179. Application fees; reimbursement of costs of review

A. Each application submitted under section 49-173 shall be accompanied by a nonrefundable fee to be established by rule.

B. An applicant shall reimburse the department for the reasonable and necessary costs of actions taken by the department pursuant to this section and sections 49-173 through 49-178, 49-180, 49-181, 49-182 and 49-185.

C. Reimbursable costs include time spent by the department's employees and the costs of goods and services contracted by the department to carry out the activities described in subsection B of this section. Time spent by the department's employees shall be reimbursed at a rate to be established by rule based upon the estimated direct and indirect costs to the department of conducting these activities. The department shall provide documentation to the applicant to support its claims for reimbursement consistent with generally accepted accounting principles. The department may require an applicant to pay an advance deposit to be applied against the department's reimbursable costs following the department's approval of an application under section 49-174. If an approved application is terminated or withdrawn pursuant to section 49-178, the applicant shall reimburse the department for its costs incurred prior to the termination or withdrawal.

D. The department may contract with an outside consultant to perform any technical review required to review a work plan submitted pursuant to section 49-175 or a report submitted pursuant to section 49-181 or to oversee work performed pursuant to a work plan approved pursuant to section 49-177 as follows:

1. The department may contract any work for which costs are reimbursable pursuant to subsection B of this section if the contract rate is less than or equal to the rate charged for time spent by the department's employees.
2. The department may contract any work upon the request of an applicant to establish deadlines for a review of a work plan or a task under an approved work plan if the applicant agrees to reimburse the department for the charges of the outside consultant.

49-186. Rules; no licensing

A. The department shall adopt rules as necessary to implement section 49-179. The adoption of rules under this section is not a prerequisite for implementation of this article.

B. Title 41, chapter 6, article 7.1 and section 41-1009 do not apply to this article.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Title 18, Chapter 1



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 8, 2022

**SUBJECT:** Arizona Department of Environmental Quality  
Title 18, Chapter 1

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This Five-Year-Review Report from the Department of Environmental Quality (5YRR) relates to rules in Title 18, Chapter 1 regarding Administration. The report covers the following Articles:

**Article 1** - Definitions

**Article 2** - Administrative Appeals

**Article 3** - Public Participation in Rulemaking

**Article 4** - Public Notice and General Public Hearings

**Article 5** - Licensing Time-Frames

In the last 5YRR of these rules the Department proposed to amend rules in Article 1 (Definitions), and proposed to submit a rulemaking to the Council by December 2017. The Department indicates they did not complete the changes due to the rule moratorium.

### **Proposed Action**

Currently, the Department is proposing to amend its rules to improve their overall effectiveness and consistency with other rules and statutes. The Department plans to submit an Expedited Rulemaking to the Council by May 2023.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Arizona Department of Environmental Quality (ADEQ) reviewed rules in Title 18 Chapter 1 regarding administration of appeal, public participation in rulemaking, public notice and general public hearings and licensing time frames. The Department indicates that, in general, the articles in this chapter do not impose compliance and reporting requirements on the general public. The Department states that any economic impact from the rules is expected to be minimal with any probable costs outweighed by the benefits from clearly articulated procedures. Stakeholders include the Department, applicants for licenses required by ADEQ and the general public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes, the Department received several comments regarding these rules. The Department adequately responded to each comment.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are overall consistent with other rules and statutes with the exception of the following:

**R18-1-101** - Definitions

**R18-1-503** - Administrative Completeness Review Time-Frame Operation;  
Administrative Completeness.

**Table 12.** Solid Waste Licenses

**Table 14.** Landfill Licenses

**Table 20.** Voluntary Program Remediation Licenses

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives with the exception of the following:

**R18-1-306** - Written Criticism of Rules

**Table 12.** Solid Waste Licenses

**Table 14.** Landfill Licenses

**Table 20.** Voluntary Program Remediation Licenses

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

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

There are no corresponding federal laws.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

11. **Conclusion**

As mentioned above, and for the specific reasons mentioned in the report, the Department is proposing to amend some of the rules to improve their overall effectiveness and consistency with other rules and statutes. The Department plans to submit an Expedited Rulemaking to the Council by May 2023.

Council staff recommends approval of this report.



Douglas A. Ducey  
Governor

ARIZONA DEPARTMENT  
OF  
ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

August 26, 2022

**SENT VIA EMAIL ONLY**

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Ave., #305  
Phoenix, AZ 85007  
[grrc@azdoa.gov](mailto:grrc@azdoa.gov)

**Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 1, Articles 1, 2, 3, 4, and 5**

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 1, Articles 1, 2, 3, 4, and 5: Department of Environmental Quality - Administration

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Edwin Slade, Administrative Counsel at 602-771-2242 or [slade.edwin@azdeq.gov](mailto:slade.edwin@azdeq.gov), if you have any questions.

Sincerely,

Misael Cabrera, P.E.  
Director

Enclosure

**Main Office**

1110 W. Washington Street • Phoenix, AZ 85007  
(602) 771-2300

**Southern Regional Office**

400 W. Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

[www.azdeq.gov](http://www.azdeq.gov)

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**Arizona Department of Environmental Quality**  
**Five-Year Review Report**  
**Title 18. Environmental Quality**  
**Chapter 1. Department of Environmental Quality – Administration**  
**Article 1. Definitions**  
**Article 2. Administrative Appeals**  
**Article 3. Public Participation in Rulemaking**  
**Article 4. Public Notice and General Public Hearings**  
**Article 5. Licensing Time-Frames**

**August 26, 2022**

**1. Authorization of the rule by existing statutes**

**Article 1: Definitions**

General Statutory Authority: A.R.S. § 41-1003 and A.R.S. § 49-104(B)(4).

Specific Statutory Authority: A.R.S. §§ 41-1092 through 1092.12.

**Article 2: Administrative Appeals**

General Statutory Authority: A.R.S. § 41-1003, A.R.S. § 49-104(B)(4), and A.R.S. § 49-114.

Specific Statutory Authority: A.R.S. §§ 41-1092 through 1092.12.

**Article 3: Public Participation in Rulemaking**

General Statutory Authority: A.R.S. § 41-1003 and A.R.S. § 49-104(B)(4).

Specific Statutory Authority: A.R.S. § 41-1023, A.R.S. § 41-1033, and A.R.S. § 41-1056  
A.R.S. §§ 49-104(B)(4), 41-1074 through 41-1076, 41-1021 through 41-1036, and 41-1056.

**Article 4: Public Notices and General Public Hearings**

General Statutory Authority: A.R.S. § 41-1003 and A.R.S. § 49-104(B)(4).

Specific Statutory Authority: A.R.S. §§ 49-104(B)(4), 41-1074 through 41-1076, and 41-1021 through 41-1036.

**Article 5: Licensing Time-frames**

General Statutory Authority: A.R.S. § 41-1003 and A.R.S. § 49-104(B)(4).

Specific Statutory Authority: A.R.S. §§ 41-1072 through 41-1076.

2. **The objective of each rule:**

<b><u>Rule</u></b>	<b><u>Objective</u></b>
<b>R18-1-101. Definitions.</b>	The purpose of this rule is to define the terms that 1) are necessary to help members of the general public read and understand Chapter 1, 2) have a meaning outside the normal, common meaning of the term, 3) are acronyms or shortened forms used in Chapter 1, and 4) are actually used in Chapter 1.
<b>R18-1-205. Notice of Intent to Rely on License Application Components as Submitted 2</b>	This purpose of this rule is to describe both the content and the effect of using the notice of intent to rely on the application components as submitted under licensing time-frames. It gives applicants a means to respond to Department requests to the appeals process.
<b>R18-1-301. Agency Record</b>	This purpose of this rule is to describe where and when the public can review agency records.
<b>R18-1-302. Petition for Rule Adoption, Amendment or Repeal</b>	This purpose of this rule is to provide procedures for petitioning the Department to repeal, amend, or adopt a rule. The rule is designed to promote public participation and also complies with the statutory requirements of A.R.Ss. § 41-1033.
<b>R18-1-303. Written Comments During Rulemaking</b>	This purpose of this rule is to describe when written comments are deemed submitted and the effect of timely submissions. The rule imposes requirements designed to provide the public means to comment on the record which must be considered by the Department in the rulemaking process.
<b>R18-1-304. Written Comments During Rulemaking</b>	This purpose of this rule is to provide for oral proceedings and is designed to promote public participation.
<b>R18-1-306. Written Criticism of Rule</b>	This purpose of this rule is to provide procedures for submitting written criticisms on a rule.
<b>R18-1-401. Notice</b>	This purpose of this rule is to describe public notice requirements. The rule imposes public notice requirements designed to inform the public of events that are of public interest plus provide means by which the public can participate in these events. The rule is designed to promote public participation.

<p><b>R18-1-402. General Public Hearing Procedures</b></p>	<p>This purpose of this rule is to provide procedures for general public hearings where the Department does not include specific public hearing procedures but a hearing is required. The rule is designed to promote public participation.</p>
<p><b>R18-1-501. Definitions</b></p>	<p>This purpose of this rule is to define the terms that 1) are necessary to help members of the general public read and understand Article 5, 2) have a meaning outside the normal, common meaning of the term, 3) are acronyms and shortened forms used in Article 5, and 4) are actually used in Article 5.</p>
<p><b>R18-1-502. Applicability; Effective Date</b></p>	<p>This purpose of this rule is to prescribe the applicability of the rule and describes what licenses are subject to time frames. The rule assists prospective applicants with determining if the sections apply to their matter.</p>
<p><b>R18-1-503. Administrative Completeness Review Time-frame Operation; Administrative Completeness</b></p>	<p>This purpose of this rule is to describe the administrative completeness review time-frame operation so licensees understand when the Department will begin the administrative completeness review.</p>
<p><b>R18-1-504. Substantive Review Time-frame Operation; Requests for Additional Information</b></p>	<p>This purpose of this rule is to describe the substantive review time-frame operation so licensees have some idea of length of time for review.</p>
<p><b>R18-1-505. Overall Time-frame Operation</b></p>	<p>This purpose of this rule is to describe the cumulative operation of multiple components for the overall time frame operation so licensees have some idea of the length of time for review.</p>
<p><b>R18-1-506. Time-frame Extension Operation</b></p>	<p>This purpose of this rule is to prescribe the starting, suspending, and ending of the time-frame extension. Subsection (A) identifies the starting of the time-frame and clarifies that the time-frame must 1st be created by a R18-1-510 time-frame extension agreement. Subsection (B) identifies the ending of the time-frame. Subsections (C) and (D) clarify that the time-frame responds to R18-1-504 comprehensive requests and R18-1-509 supplemental request agreements. Subsection (E) identifies one other section that may also control the running of this time-frame.</p>
<p><b>R18-1-507. Ending of Time-frames; Licensing Decisions; Withdrawal; Notice of Licensing Time-frames Nonapplicability</b></p>	<p>This purpose of this rule is to prescribe the actions that may end a time-frame and the process for denying a license. Subsection (A), (E), and (F) identify actions that will terminate a time-frame. Subsections (B) through (D) identify the situations in which the Arizona Department of Environmental Quality (ADEQ) may deny a license.</p>

<p><b>R18-1-508. Licensing Time-frames Pre-application Agreements</b></p>	<p>This purpose of this rule is to prescribe the terms of pre-application agreements that may be offered by the Department for the benefit of applicants. None of these agreements are required. This Section represents the compromise in balancing between establishing fixed times established under the licensing time frame (LTF) laws leading to sanctions and the increased work and flexibility needed by the Department to respond to an applicant's desire not to submit all components complete at one time and at the beginning of the process.</p>
<p><b>R18-1-509. Licensing Time-frames Supplemental Request Agreements</b></p>	<p>This purpose of this rule is to prescribe the terms of supplemental request agreements. Title 41, Chapter 6, article 7.1 (Article 7.1) identifies and describes such agreements. Subsection (A) clarifies that an applicant and the Department may enter into any number of supplemental request agreements with the time-frames suspending each time but that suspensions can last only until the receipt of missing information identified in the agreements. Subsection (B) prescribes the minimum terms that every supplemental request agreement must contain. These agreements are necessary because applicants do not always submit all of the information in their applications that is sufficient to make a reasoned licensing decision.</p>
<p><b>R18-1-510. Licensing Time-frames Extension Agreements</b></p>	<p>This purpose of this rule is to describe the terms of time-frame extension agreements. Article 7.1 identifies and describes such agreements. Subsection (A) clarifies that an applicant and the Department may enter into any number of time-frame extension agreements. Subsection (B) prescribes how to determine the base time that, in turn, determines the maximum extent to which the sum of all agreements can extend the time-frames. Subsection (C) prescribes the minimum terms that every time-frame extension agreement must contain.</p>
<p><b>R18-1-511. Licensing Time-frames Changed Application</b></p>	<p>This purpose of this rule is to prescribe the terms of changed application agreements. The Department may offer these agreements for the benefit of applicants. The alternative to a changed application agreement is for the applicant to withdraw a pending application and resubmit as a new application with the desired changes. This Section balances the need of the applicant to minimize fee expenditure with the limitations on Departmental resources and the desire of other applicants for the timely resolution of their license applications.</p>

<p><b>R18-1-516. Reassignment of License Category</b></p>	<p>This purpose of this rule is to prescribe the conditions under which the Department may unilaterally reassign the license category of an application and then notify the applicant of the change. This Section gives the Department the necessary flexibility to reassign licenses to different categories when circumstances warrant while protecting the rights of applicants.</p>
<p><b>R18-1-517. Application Withdrawal</b></p>	<p>This purpose of this rule is to explain that all time-frames for applications end when that application is withdrawn.</p>
<p><b>R18-1-518. Emergencies and Upset Conditions</b></p>	<p>This purpose of this rule is to prescribe the conditions under which the Department may suspend certain provisions of this Article. Two types of suspension are available: (1) a moratorium on the starting of time-frames on new applications and (2) the suspension of time-frames for applications already in process.</p>
<p><b>R18-1-519. Public Hearings; Public Meetings; Public Notice Periods</b></p>	<p>This purpose of this rule is to prescribe the applicability of the licensing time-frames to the noticing and holding of public hearings when such hearings are required before the Department may grant a license. The Section is needed to guarantee that notices and hearings are deemed valid.</p>
<p><b>R18-1-520. Notice of Intent to Rely on the Application Components as Submitted</b></p>	<p>This purpose of this rule is to respond to certain appealable agency actions that Article 7.1 requires the Department to take during the pendency of a license application that are subject to the notice requirements of A.R.S. § 41-1092.03 and hearings before a department of administrative law judge. At least two Article 7.1 required actions fall into this category if they suspend the time-frames: the R18-1-503 notice of administrative deficiencies and the R18-1-504 substantive request for additional information. This rule provides other similar instances. This rule promotes the smooth operation of time-frames because the decision to issue the R18-1-503 notice or R18-1-504 request (and thus suspend the time-frames) is determinative of an applicant’s “legal rights, duties, or privileges” subject to A.R.S. §§ 41-1092 through 41-1092.11. Without the notice provisions provided in this rule, an applicant could pursue immediate appeals of R18-1-503 notices and R18-1-504 requests, causing needless complications to the operation of the time-frames, a consequence not addressed in Article 7.1.</p>
<p><b>R18-1-521. Notice of Intent to Rely on the License Category</b></p>	<p>This rule is similar to the notice of intent to rely on application components submitted described immediately above and relates to R18-1-516. The decision to issue the notification of a changed license category in R18-1-516 is</p>

	determinative of an applicant’s “legal rights, duties, or privileges” subject to A.R.S. §§ 41-1092 through 41-1092.11, and without these notice provisions an applicant could pursue immediate appeals of R18-1-516.
<b>R18-1-522. Notice of Change of Applicant's Agent for Receiving Licensing Time-frames Notices</b>	This purpose of this rule is to provide the method by which an applicant may change the designation of its agent for receipt of licensing time-frames notices.
<b>R18-1-523. Refunds, Fee Excusals, and Penalties</b>	This purpose of this rule is to prescribes Department procedures for determining and making license refunds, fee excusals, and penalty payments.
<b>R18-1-524. Site Inspections</b>	This purpose of this rule is to harmonize the requirements of Article 7.1 and A.R.S. § 41-1009 governing Department duties concerning site inspections by clarifying that the Department will limit the extent of its site inspections when made as an application component for an application subject to Article 7.1 so that no further notifications or other requirements under A.R.S. § 41-1009 will apply after the inspection is complete.
<b>R18-1-525. Licensing Time-frames; Application Components</b>	This rule references the license tables accompanying this rule. These tables, Table 1 through Table 22 are found in Part II of Article 5 and are the actual operational “time frames” which the Department must achieve.
<b>Table 1. Class I Air Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Class I Air Licenses.
<b>Table 2. Class II Air Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Class II Air Licenses.
<b>Table 3. Open Burn Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Open Burn Licenses.
<b>Table 4. Vehicle Emission Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Vehicle Emission Licenses.
<b>Table 5. Safe Drinking Water Construction Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Safe Drinking Water Construction Licenses.
<b>Table 7. Pesticide Contamination Prevention Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Pesticide Contamination Prevention License.

<b>Table 8. Safe Drinking Water Monitoring and Treatment Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Safe Drinking Water Monitoring and Treatment Licenses.
<b>Table 10. Water Permit</b>	This purpose of this table is to describe the licensing time-frames for Water Permits.
<b>Table 11. Surface Water Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Surface Water Licenses.
<b>Table 12. Solid Waste Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Solid Waste Licenses.
<b>Table 13. Special Waste Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Special Waste Licenses.
<b>Table 14. Landfill Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Landfill Licenses
<b>Table 15. Biohazardous Medical Waste Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Biohazardous Medical Waste Licenses.
<b>Table 16. Waste Tire, Lead Acid Battery, and Used Oil License</b>	This purpose of this table is to describe the licensing time-frames and application components for Waste Tire, Lead Acid Battery, and Used Oil License.
<b>Table 17. Hazardous Waste Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Hazardous Waste Licenses.
<b>Table 18. Underground Storage Tank Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Underground Storage Tank Licenses.
<b>Table 20. Voluntary Program Remediation Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Voluntary program Remediation Licenses.
<b>Table 21. Pollution Prevention Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Pollution Prevention Licenses.
<b>Table 22. Multi-Program Licenses</b>	This purpose of this table is to describe the licensing time-frames and application components for Multi-Program Licenses.

3. Are the rules effective in achieving their objectives? Yes  No

The rules are effective in achieving their objectives. Minor clarifications can be made as described in the table below.

Rule	Explanation
<b>R18-1-306. Written Criticism of Rule</b>	R18-1-306(C) contains an outdated reference to Arizona Revised Statute (A.R.S.) §41-1054. This statute was renumbered and transferred to A.R.S. §41-1056 effective Jan. 1, 1995.
<b>Table 12. Solid Waste Licenses</b>	The permits listed in Table 12 are solid waste APPs, issued under the same authority as APPs in the Water Quality Division (Table 10). There are inconsistencies in the timeframes between Table 10 and 12. Table 12 also includes some additional categories that Table 10 does not.
<b>Table 14. Landfill Licenses</b>	There is no LTF for the Mining Landfill General Permit (A.A.C. R18-13-802) established in 2014.
<b>Table 20. Voluntary Program Remediation Licenses</b>	Group I refers to a statute that was repealed in 2008 and should be repealed. ADEQ no longer issues these licenses.

4. Are the rules consistent with other rules and statutes? Yes  No

The rules are consistent with the rules and statutes of Arizona and the United States. Minor clarifications can be made as described in the table below.

Rule	Explanation
<b>R18-1-101. Definitions.</b>	Two amendments are needed to incorporate the Uniform Administrative Hearing Procedures in title 41, Chapter 6, Article 10 which applies to appeals of agency decisions under A.R.S. § 49-114. First, A.R.S. § 41-1092 needs to be added to the list of statutes that contain definitions which are applicable to 18 A.A.C. 1. Second, the definition of hearing officer should be deleted from definitions in R18-1-101 since the ADEQ no longer appoints hearing officers. Formal

	hearings challenging ADEQ actions are now resolved in a hearing before the OAH under A.R.S. § 49-114.
<b>R18-1-503 Administrative Completeness Review Time-frame Operation; Administrative Completeness</b>	The rule as worded could be interpreted to be inconsistent with Title 41 licensing timeframes for administrative completeness review.
<b>Table 12. Solid Waste Licenses</b>	Some of the permits listed in Table 12 are solid waste APPs, issued under the same authority as APPs in the Water Quality Division (Table 10). There are inconsistencies in the timeframes between Table 10 and 12.
<b>Table 14. Landfill Licenses</b>	There is no LTF for the Mining Landfill General Permit (A.A.C. R18-13-802) that was established in 2014. Some of the permits listed in Table 14 are solid waste APPs, issued under the same authority as APPs in the Water Quality Division (Table 10). There are inconsistencies in the timeframes between Table 10 and 14.
<b>Table 20. Voluntary Program Remediation Licenses</b>	Group I refers to a statute that was repealed in 2008 and should be repealed. ADEQ no longer issues these licenses.

5. **Are the rules enforced as written?** Yes  No

The rules are enforced as written.

6. **Are the rules clear, concise, and understandable?** Yes  No

The rules are clear, concise, and understandable except as noted below.

7. **Has the agency received written criticisms of the rules within the last five years?**

Yes  No

<b>Rule</b>	<b>Explanation</b>
<b>Article 1-4 Generally</b>	<p><u>Comment 1:</u> These rules were developed prior to the ongoing pandemic and are obsolete. Public participation must include electronic access to all aspects of the rulemaking process.</p> <p><u>Response 1:</u> ADEQ appreciates this comment. ADEQ now provides notice on its website in addition to the published</p>

	<p>State register. ADEQ conducts hearings virtually and allows for participation through electronic communication. Occasionally, some hearings are conducted in-person when the community requests in-person hearings. ADEQ follows all statutes and rules regarding notices and meetings.</p>
<p><b>Article 1-4 Generally</b></p>	<p><u>Comment 2:</u> With expected challenges from both transmissible disease and from the monetary and greenhouse gas emission costs associated with travel, the rules need to make it easier for the public to participate via electronic communication, for all aspects of the public process, including, but not limited to, filing petitions and participating in hearings.</p> <p><u>Response 2:</u> ADEQ appreciates this comment. ADEQ now provides notice on its website in addition to the published State register. ADEQ conducts hearings virtually and allows for participation through electronic communication. Occasionally, some hearings are conducted in-person when the community requests in-person hearings. ADEQ follows all statutes and rules regarding notices and meetings.</p>
<p><b>Article 1-4 Generally</b></p>	<p><u>Comment 3:</u> There is so much legalese that few will become aware of the full content; however, that is by nature, unavoidable.</p> <p><u>Response 3:</u> ADEQ appreciates this comment. ADEQ will continue to look for ways to improve rule language to provide clarity.</p>
<p><b>Article 1-4 Generally</b></p>	<p><u>Comment 4:</u> All information provided by ADEQ is written in legalese and not intended to be readily understood. There is a belief by ADEQ their rules, regulations, bulletins are clear, concise, understandable and they are if one is versed in governmental legalese, but not to the man on the street.</p> <p><u>Response 4:</u> ADEQ appreciates this comment. ADEQ will continue to look for ways to improve rule language to provide clarity.</p>
<p><b>Article 1-4 Generally</b></p>	<p><u>Comment 5:</u> I'd like to see a rule added granting ADEQ power to make an extension to a rule if requested. These requests should be allowed on a case by case review basis. For instance, in the medical waste section there is a rule not permitting the transfer of medical waste from one vehicle to another except in emergency situations. If ADEQ had the authority to receive an exemption from a licensee. I could submit a specific exemption based on my specific business</p>

	<p>and situation, whereas ADEQ could look at all these factors and with RULE authority make an exemption. ADEQ has no rules in place giving them authority to receive an exemption request and review it.</p> <p><u>Response 5:</u> ADEQ appreciates this comment. ADEQ will consider this amendment if there is any future rulemaking for medical waste rules. This amendment would broaden the scope of general rule exemptions and may be better addressed in a medical waste rule, specifically. Please contact our Waste Division if you have a specific request.</p>
<p><b>R18-1-205. Notice of Intent to Rely on License Application Components as Submitted</b></p>	<p><u>Comment 6:</u> Grant the license unconditionally, meaning that the Department did not add conditions not requested by the applicant. "Unconditionally" should not be included anywhere in the application.</p> <p><u>Response 6:</u> ADEQ appreciates this comment. Any conditions in a license must be authorized by law or rule. An issued license is appealable should an applicant believe there are conditions included that are not lawful.</p>
<p><b>R18-1-401. Notice</b></p>	<p><u>Comment 7:</u> Article 4, Section A could be improved by requiring publication of notice on general public hearings to the ADEQ website at least 30 days prior to the meeting, with all the required information listed in Sections A and B.</p> <p><u>Response 7:</u> ADEQ appreciates this comment. ADEQ does provide notice on its website at least 30 days prior to a meeting. ADEQ will consider adding this requirement if the rules are amended for other reasons. ADEQ follows all statutes and rules regarding notices and meetings.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 8:</u> Very long and hard to find what I am looking for. Not when you test in the summer when school is not in session. Do not test schools during the summer.</p> <p><u>Response 8:</u> ADEQ appreciates this comment. ADEQ is not sure of the intention of this comment. The subject matter of this Article concerns licensing time frames. Please contact our Drinking Water section if you have a specific issue.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 9:</u> Need to extend certification for distribution grades.</p> <p><u>Response 9:</u> ADEQ appreciates this comment.</p>

<p><b>Article 5 Generally</b></p>	<p><u>Comment 10:</u> From the perspective of a managing owner, the clause is missing notation for "best intent of requirement," in our current employment environment, all of us as employers are experiencing an unprecedented turn over either of employees or lack thereof, with this in mind, can you please add clauses that are not detrimental to a small business owner if we happen to be late in submitting or completing, as long as we prove that we did not try to complete but were limited to resources. Second item, the submission process is not always captured and in the past it showed for our company is not always captured and in the past, it showed for our company that we had submitted and had to resubmit. With that in mind, if a delay is caused by the software or lack of personnel in an agency, again will not leave a negative record on the private company.</p> <p>Offer longer terms, as long as company has complied and has no fines. OK to increase the fee that is comparable to the number of years extended.</p> <p>Thank you.</p> <p><u>Response 10:</u> ADEQ appreciates this comment. Please raise any specific issues about submissions or difficulty meeting compliance timeframes with our ADEQ staff. This Chapter does not address compliance submissions.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 11:</u> If I were a Lawyer this would be more comprehensible. Simplify the actions required to understand what is being asked.</p> <p><u>Response 11:</u> ADEQ appreciates this comment. ADEQ will continue to look for ways to improve rule language to provide clarity.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 12:</u> In the past I have been charged for admin review process timing at \$125.00 per hour. Very costly and there is no control over the time spent on rereview and what you will be charged for. In addition to the permit fee. There is no timing on the permit other than the overall time. You provide a service which is needed and if the admin person is slow to review the requester pays the price with no notice or time frame until you get the bill. There should be some controls in this area.</p> <p><u>Response 12:</u> ADEQ appreciates this comment. ADEQ charges fees based on established fee rules. The \$122.00 per hour was established as an average hourly fee considering the</p>

	<p>different types of review and expertise necessary to process the license. Fees also have maximum amounts allowable. ADEQ is continuously improving its permitting process. Please see data on how recent improvements led to faster permitting timeframes. <a href="http://www.azdeq.gov/ams">http://www.azdeq.gov/ams</a></p> <p>Please feel free to discuss your specific ideas for improvement with our permitting managers and Department leadership.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 13:</u> Why does it take so long to grant permits, if you have standards upfront you should only have to look at what is not standard? This should minimize the time and personnel needed to do the job.</p> <p>Spend the time to create standards in your process in order to achieve compliance in a timely manner, make it easier for people to do their job and your customers to be in compliance instead of making it a huge undertaking for everyone involved.</p> <p><u>Response 13:</u> ADEQ appreciates this comment. ADEQ is continuously improving its permitting process. Please see data on how recent improvements led to faster permitting timeframes. <a href="http://www.azdeq.gov/ams">http://www.azdeq.gov/ams</a></p> <p>Please feel free to discuss your specific ideas for improvement with our permitting managers and Department leadership.</p>
<p>Article 5 Generally</p>	<p><u>Comment 14:</u> If you create a survey for people's input, I hope you listen and make changes, or least take them under consideration. Lack of manpower should not be the issue and or punish the requestor with delays. There is no pricing on this article for administration fees?</p> <p><u>Response 14:</u> ADEQ appreciates this comment. ADEQ's program fees are located in program rules, not within this rule, but the rules that contain fees are referenced within this Article in the licensing timeframe tables.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 15:</u> Time frames need to be examined to determine if reasonable. If I read the section correctly, completeness can take over 400 days.</p> <p><u>Response 15:</u> ADEQ appreciates this comment. ADEQ is continuously improving its permitting process. Please see data on how recent improvements led to faster permitting timeframes. <a href="http://www.azdeq.gov/ams">http://www.azdeq.gov/ams</a></p> <p>Please feel free to discuss your specific ideas for improvement with our permitting managers and Department leadership.</p>

<p><b>Article 5 Generally</b></p>	<p><u>Comment 16:</u> Issues with Article 5 being clearly defined or the ability to understand the content.</p> <p><u>Response 16:</u> ADEQ appreciates this comment. ADEQ will continue to look for ways to improve rule language to provide clarity.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 17:</u> The reporting process is becoming more difficult, but once the upload section(s) were understood and how to report it is somewhat easier. Reporting in general is becoming more difficult.</p> <p><u>Response 17:</u> ADEQ appreciates this comment.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 18:</u> Need a summary so that extensive study of the rule is not necessary.</p> <p><u>Response 18:</u> ADEQ appreciates this comment. ADEQ will continue to look for ways to enhance rule language to provide clarity.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 19:</u> ADEQ doesn't follow their own rules or timeframes.</p> <p><u>Response 19:</u> ADEQ follows all laws and rules. Please contact ADEQ with specific instances so that we may address your concerns.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 20:</u> It would be nice if the medical waste transporter license request came earlier than a couple weeks before due.</p> <p><u>Response 20:</u> ADEQ appreciates this comment and will consider whether Department practice can be improved.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 21:</u> The Licensing Table in rule is different than the licensing table in delegation agreements with the counties.</p> <p><u>Response 21:</u> ADEQ appreciates this comment. Counties that are delegated ADEQ authority to issue licenses are required to issue licenses according to ADEQ's licensing timeframes.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 22:</u> Too much wording &amp; C.Y.A. pages upon pages of outlining the desire to modify certification frequency.</p> <p><u>Response 22:</u> ADEQ appreciates this comment. ADEQ will continue to look for ways to enhance rule language to provide clarity.</p>

<p><b>Article 5 Generally</b></p>	<p><u>Comment 23:</u> 5 years is too long for any emissions officer to go without recertification. Perhaps a stretch of 4 years without the burden of “over-testing” from a too-frequent schedule and not so far apart that fundamentals become hazy &amp; specifics forgotten.</p> <p><u>Response 23:</u> ADEQ appreciates this comment. The recertification process for emissions inspectors is biannual according to R18-2-1016. There is no five-year certification process. All emissions inspector licenses are active for 2 years. The inspector can renew the license up to 60 days prior to the license expiration.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 24:</u> If 2 businesses share the same property, make thing easier for using the same testing equipment for both company’s retail fleets.</p> <p><u>Response 24:</u> ADEQ appreciates this comment. If two businesses are part of the same parent company, then they are permitted to utilize the same testing equipment. Two businesses merely sharing real estate does not entitle them to share the same equipment. This is outlined in R18-2-1019. There are equipment certification and liability concerns that the Department must consider.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 25:</u> Too much legalese. Rules need to be published in a way that anyone reading it can understand them.</p> <p><u>Response 25:</u> ADEQ appreciates this comment. ADEQ will continue to look for ways to improve rule language to provide clarity.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 26:</u> No lay person has the time to review and read or understand this section. Lawyer must have written this to protect the agency. Leave it alone.</p> <p><u>Response 26:</u> ADEQ appreciates this comment. ADEQ will continue to look for ways to improve rule language to provide clarity.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 27:</u> Provide test kits for water sampling.</p> <p><u>Response 27:</u> ADEQ appreciates this comment.</p>
<p><b>Article 5 Generally</b></p>	<p><u>Comment 28:</u> The LTF rules work when the agency and applicants use them properly. I had an instance last year where APP did not use LTF statute or rules properly and they forced me to withdrawal the application. Rare instance, but</p>

	<p>extremely frustrating... I recommend if the rules stay in place, that all programs must follow them and not make up their own method of how they want to run a clock. Staff was too goal focused on LEAN to meet time clocks and did not provide review according to statute.</p> <p><u>Response 28:</u> ADEQ occasionally works with applicants to suggest that an application is withdrawn when significant time will elapse before the applicant can provide required information, in lieu of denying an application which will cause the applicant to lose fees already submitted. If ADEQ staff inappropriately made a request for you to withdraw an application, please notify ADEQ leadership so that ADEQ can investigate and, if necessary, hold staff accountable.</p>
<p><b>R18-1-507. Ending of Time-frames; Licensing Decisions; Withdrawal; Notice of Licensing Time-frames Nonapplicability</b></p>	<p><u>Comment 29:</u> Does A.A.C. R18-1-507(B) mean the Department can deny an applicant even if no RAIS, nor CRAI letter was issued by the Department?</p> <p><u>Response 29:</u> No, ADEQ will not deny a license if it has not followed the appropriate notification and issuance letters required by law and rule.</p>

**8. Economic, small business, and consumer impact comparison:**

**Article 1. Definitions**

This section defines terms and does not impose compliance and reporting requirements on applicants; therefore, there is no economic impact, in and of itself.

**Article 2. Administration Appeals**

This section provides appeal procedures and does not impose compliance and reporting requirements on applicants. The overall impact is expected to be minimal with any probable costs outweighed by the benefits of clearly articulated procedures to appeal an agency decision. Economic costs could be generated during the time an applicant spends preparing for an informal settlement conference or an administrative appeal, however, these costs are expected to be less than the reapplying if the appeal process were not available to an applicant.

**Article 3. Public Participation in Rulemaking**

This section provides procedures for public participation in rulemaking and does not impose compliance and reporting requirements on the general public. The overall impact

is expected to be minimal with any probable costs outweighed by the benefits of clearly articulated procedures for the public to participate in agency rule makings.

**Article 4. Public Notice and General Public Hearings**

This section provides public notice and public hearing requirements when such is not prescribed by rule or statute. Economic costs would be generated during the time spent coordinating and responding to notices and participating in hearings. However, the overall impact is expected to be minimal with any probable costs outweighed by the benefits of clearly articulated procedures in all cases for public notices and public hearings.

**Article 5. Licensing Time-frames**

This section does not create new licenses but add time-frames to existing licenses. Economic costs could be generated during the time an applicant applies for a license and the time it is granted.

**9. Has the agency received any business competitiveness analysis of the rules?**

Yes \_\_\_ No X

ADEQ has not received any analysis submitted by another person that compares the rules’ impact on Arizona’s business competitiveness to the impact on businesses in other states.

**10. Has the agency completed the course of action indicated in the agency’s previous five-year report?**

ADEQ did not propose any course of action except to retain the current rules.

<u>Rule</u>	<u>Explanation</u>
R18-1-101. Definitions.	2017: A rule moratorium remains in effect; therefore, ADEQ did not file a Notice of Final Rulemaking with GRRC in December, 2017 to update this section.
Article 2: administrative Appeals	2017: Retain the current rules.
Article 3: Public Participation in Rulemaking	2017: Retain the current rules.

Article 4: Public Notice and General Public Hearings	2017: Retain the current rules.
Article 5: Licensing Time-Frames	2017: Retain the current rules.

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

<b><u>Rule</u></b>	<b><u>Explanation</u></b>
Article 1: Definitions.	This rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.
Article 2: Administrative Appeals	The rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.
Article 3: Public Participation in Rulemaking	The rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.
Article 4: Public Notice and General Public Hearings	The rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.
Article 5: Licensing Time-Frames	The rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

**12. Are the rules more stringent than corresponding federal laws? Yes \_\_ No X**

**Article 1. Definitions**

None of the definitions are more stringent than federal law.

**Article 2. Administration Appeals**

None of the rules in this section are more stringent than federal law.

**Article 3. Public Participation in Rulemaking**

None of the rules in this section are more stringent than federal law.

**Article 4. Public Notice and General Public Hearings**

None of the rules in this section are more stringent than federal law.

**Article 5. Licensing Time-frames**

There is no corresponding federal law; therefore, none of the selections are more stringent. None of the rules in this section are more stringent than federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules were adopted before 2010.

14. **Proposed course of action:**

**Article 1. Definitions**

Due to competing priorities, no risk to mission operations, and extensive stakeholder outreach necessary for this rulemaking, ADEQ has lowered the priority of this rulemaking and has no scheduled update at this time. Retain the rule.

**Article 2. Administration Appeals**

No provisions are planned. Retain the rules.

**Article 3. Public Participation in Rulemaking**

No provisions are planned. Retain the rules.

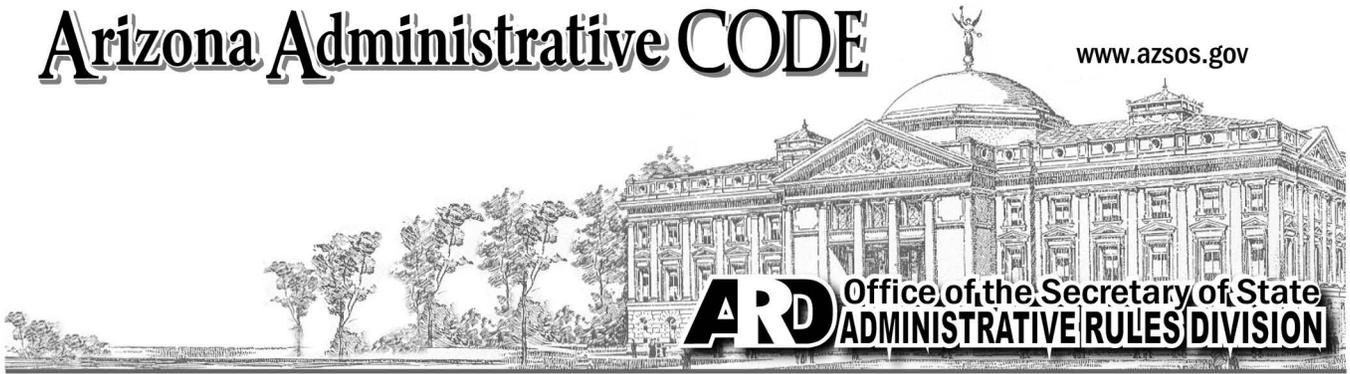
**Article 4. Public Notice and General Public Hearings**

No provisions are planned. Retain the rules.

**Article 5. Licensing Time-frames**

Provided an exemption from the Rulemaking Moratorium is granted for an expedited rulemaking, ADEQ anticipates submitting the final rulemaking to GRRC by 5/30/23. ADEQ will the proposed changes in the table below.

<u>Rule</u>	<u>Proposed Change</u>
<b>R18-1-101. Definitions</b>	Delete the definition of “hearing officer” because ADEQ no longer appoints hearing officers and the term is no longer cited in the rules.
<b>R18-1-306. Written Criticism of Rule</b>	Update outdated reference to A.R.S. §41-1054 to A.R.S. §41-1056.
<b>R18-1-503 Administrative Completeness Review Time-frame Operation; Administrative Completeness</b>	Ensure clarity between ADEQ's administrative completeness review rule and the Arizona statutes that state when ADEQ begins the administrative completeness review.
<b>Table 12. Solid Waste Licenses</b>	Align the substantive review time-frames (SRTF) in Tables 10 and 12, for the following license categories (LC) in Table 12: 3, 5, 7, 9, 10, 11.
<b>Table 14. Landfill Licenses</b>	Align the substantive review time-frames (SRTF) in Tables 10 and 14, for the following license categories (LC) in Table 14: 4, 10, 12, 16, 17, 18. Add a licensing category for Mining Landfill General Permit.
<b>Table 15. Biohazardous Medical Waste Licenses</b>	In Licensing Category 3, update “No” to “Yes” under “Subject to Sanctions.” Add a line referencing the fee rule in R18-13-1409.
<b>Table 16. Waste Tire, Lead Acid Battery, and Used Oil Licenses</b>	In Licensing Category 1, update “No” to “Yes” under “Subject to Sanctions.” Add a line referencing the fee rule in R18-13-1211 through R18-13-1212 (waste tires).
<b>Table 17. Hazardous Waste Licenses</b>	In Licensing Category 26, update “Yes” to “No” under “Subject to Sanctions.” Remove reference to fee rule.
<b>Table 20. Voluntary Program Remediation Licenses</b>	Remove Group I. Change “Group II” to “Group I.” Correct reference to CFR from (c)(1)(C) to (c)(3)



18 A.A.C. 1

Supp. 22-3

## TITLE 18. ENVIRONMENTAL QUALITY

### CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

The table of contents on page one contains links to the referenced page numbers in this Chapter.  
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of  
July 1, 2022 through September 30, 2022

[Table 10.](#)      [Water Permit Licensing Time-Frames \(Business Days\)](#) ..... [25](#)

#### Questions about these rules? Contact:

Department: Arizona Department of Environmental Quality  
Water Quality Division  
Address: 1110 W. Washington St.  
Phoenix, AZ 85007  
Website: <https://azdeq.gov/UIC>  
Name: Jon Rezabek, Legal Specialist  
Telephone: (602) 771-8219  
Email: [rezabek.jon@azdeq.gov](mailto:rezabek.jon@azdeq.gov)

**The release of this Chapter in Supp. 22-3 replaces Supp. 17-2, 1-36 pages.**

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

### THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31  
Second Quarter: April 1 - June 30  
Third Quarter: July 1 - September 30  
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

### RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State’s website, [www.azsos.gov](http://www.azsos.gov) under Services-> Legislative Filings.

### EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

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*Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.*

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

Authority: A.R.S. § 49-203(A)(6)

Supp. 22-3

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## ARTICLE 1. DEFINITIONS

**R18-1-101. Definitions**

The definitions in A.R.S. § 41-1001, except for the definition of “person”, shall apply to this Chapter. In addition, the terms in this Chapter shall have the following meanings:

1. “Attorney general” means the attorney general of the state of Arizona and includes any assistant attorneys general or other attorneys appointed by the Office of the Attorney General to represent the Department at a contested case.
2. “Department” means the Department of Environmental Quality.
3. “Director” means the Director of the Department of Environmental Quality or the Director’s designee.
4. “General public hearing” means a hearing, subject to the requirements of Article 4, held to obtain comment from the public with respect to Department actions. “General public hearing” shall not include oral proceedings, or contested case hearings.
5. “Hearing officer” means an individual appointed by the Director to perform the duties described in R18-1-203 at any contested case hearing.
6. “Oral proceeding” means a proceeding held during the rulemaking process, as described by A.R.S. § 41-1023.
7. “Person” means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association, state, a political subdivision of this state, or commission or the United States Government or a federal facility, interstate body or other entity.
8. “Presiding officer” means any individual appointed by the Director to perform the duties described in R18-1-304 at any oral proceeding.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3).

## ARTICLE 2. ADMINISTRATIVE APPEALS

**R18-1-201. Expired****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1575, effective April 28, 2017 (Supp. 17-2).

**R18-1-202. Expired****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 3772, effective September 22, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1575, effective April 28, 2017 (Supp. 17-2).

**R18-1-203. Expired****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1575, effective April 28, 2017 (Supp. 17-2).

**R18-1-204. Expired****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1575, effective April 28, 2017 (Supp. 17-2).

**R18-1-205. Notice of Intent to Rely on License Application Components as Submitted**

- A. If the Department submits to a license applicant a notice that the application is missing required components, is substantively deficient, or is otherwise deficient, or submits to a license applicant a request for additional information to enable the Department to reach a decision to grant the license, then the Department shall include a brief explanation of the basis of or reason for the notice or request.
- B. If a license applicant receives a notice from the Department that the application is lacking application components, is substantively deficient, or is otherwise deficient, or receives from the Department a request for additional information, the applicant, in lieu of submitting some or all of the components or information identified by the Department, may submit to the Department a written notice of intent to rely on the application components as submitted. The applicant shall submit the notice of intent to rely on the application components as submitted within the time specified in the Department’s notice of deficiencies or request for additional information. If the Department’s notice of deficiencies or request for additional information does not specify a time, then the applicant shall submit the notice of intent to rely on the application components as submitted within 60 days after the mailing date of the Department’s notice of deficiencies or request for additional information.
- C. A notice of intent to rely on the application components as submitted shall include the following:
  1. Name of the applicant.
  2. License application number or other identification.
  3. Date of the Department notice or request in question.
  4. Identification of the application component or components objected to with reasons for the objection or objections.
  5. A statement that the applicant intends to rely on the application components as submitted as the basis upon which the Department may determine whether to grant or deny the license.
- D. A license applicant may submit additional license application components or other information at the same time the applicant submits a notice of intent to rely on the application components as submitted.
- E. The Department, after receiving a notice of intent to rely on the license application components as submitted, shall do one of the following:
  1. Rescind its request for the application component or components objected to in the notice.
  2. Modify its request for the application component or components objected to in the notice.
  3. Grant the license unconditionally, meaning that the Department did not add conditions not requested by the applicant.
  4. Grant the license with conditions, meaning that the Department added conditions not requested by the applicant.
  5. Deny the license.
- F. To the extent that a licensing provision of the Arizona Revised Statutes requires different treatment of licensing notifications

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of application deficiencies or licensing requests for additional information, this Section does not apply.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-206. Expired****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1575, effective April 28, 2017 (Supp. 17-2).

**R18-1-207. Expired****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1575, effective April 28, 2017 (Supp. 17-2).

**R18-1-208. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-209. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-210. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-211. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-212. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-213. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-214. Reserved****R18-1-215. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-216. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-217. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-218. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**R18-1-219. Repealed****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section repealed by final rulemaking at 5 A.A.R. 2854, effective July 30, 1999 (Supp. 99-3).

**ARTICLE 3. PUBLIC PARTICIPATION IN RULEMAKING****R18-1-301. Agency Record**

The official rulemaking record is located in the Department and may be reviewed any working day, Monday through Friday, from 8:00 a.m. until 5:00 p.m., except state holidays.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3).

**R18-1-302. Petition for Rule Adoption, Amendment or Repeal**

- A.** Any person requesting that the Department adopt, amend, or repeal a rule, pursuant to A.R.S. § 41-1033, shall submit a petition as prescribed in this Section before such request may be considered by the Department.
- B.** Each petition shall contain:
1. The name and current address of the person submitting the petition.
  2. If the request is for adoption of a new rule, a statement of that fact, followed by the specific language of the proposed rule.
  3. If the request is for amendment of a current rule, a statement of that fact, followed by the A.A.C. number and title of the rule being proposed for amendment. This shall be followed by the specific language of the current rule; any language to be deleted shall be struck out but clearly readable, and any language to be added by the proposed amendment shall be underlined.
  4. If the request is for repeal of a current rule, a statement of this fact, followed by the A.A.C. number and title of the rule being proposed for repeal.
  5. The signature of the person submitting the petition.
  6. The reason the rule should be adopted, amended or repealed.
- C.** The petition may contain any information to support subsection (B)(6) of this Section, including:

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1. Any statistical data or other justification, with clear reference to any exhibits which may be attached to the petition;
  2. An identification of what persons or segment of the public the petitioner believes would be affected and how they would be affected;
  3. If the petitioner is a public agency, the petition may also contain a summary of issues raised in any public hearing which may be relevant, or any written comments offered by the public;
  4. The identification of any statute which the petitioner believes gives the Department the authority to adopt, amend, or repeal the rule.
- D.** Within 60 calendar days of the receipt by the Director of a complete petition, the Department shall act in accordance with A.R.S. § 41-1033 as follows:
1. If the petition results in the initiation of a rulemaking, the procedures for rulemaking, set forth in Title 41, Chapter 6, Article 3, Arizona Revised Statutes, shall be followed.
  2. If the petition is denied, a written notice stating the basis of denial shall be issued by the Director to the person filing the petition.
  3. The original petition and a copy of any notice of denial shall be placed in the official record and remain there for five years to be considered in the course of the Department's five-year rule review process.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3).

**R18-1-303. Written Comments During Rulemaking**

- A.** Any member of the public may comment upon a rule proposed by the Department by submitting written comments on the proposed rule to the Director.
- B.** Any document is considered to have been submitted on the date it is received by the Department. If a document is mailed, this date shall be the date on the postmark.
- C.** All written comments received during the period specified by A.R.S. § 41-1023(A) shall be considered by the Department.
- D.** All original written comments on proposed rules shall be placed in the official record.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3).

**R18-1-304. Oral Proceedings**

- A.** Requests for oral proceedings, as prescribed in A.R.S. § 41-1023, shall:
  1. Be filed with the Director;
  2. Include the name and current address of the person making the request;
  3. Refer to the proposed rule and include the date and issue of the Arizona Administrative Register in which the notice was published, if known.
- B.** The oral proceeding shall be recorded either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers and all written comments received shall become part of the official record.
- C.** The procedures the presiding officer shall use to conduct oral proceedings shall include:
  1. Voluntary registration of attendees. Identification shall not be required, however, in order for a person to attend an oral proceeding.
  2. Registration of persons intending to speak. Registration information shall include the registrant's name, representa-

tative capacity, if applicable, and a brief summary of intended oral remarks.

3. Opening of the record. Opening remarks by the presiding officer shall summarize the rulemaking activities to date and the importance and purpose of public comments, and present the agenda.
  4. A statement by Department representatives. The statement shall explain the contents, purpose and intended operation of the proposed rulemaking, including the economic impact and any adverse impact on small businesses.
  5. A public oral comment period. Public oral comments may be limited to a reasonable time period, as determined by the presiding officer. Comments may be limited to prevent undue repetition.
  6. Further presentations. The Department may present additional information during an oral proceeding, after public comments are received. Any person shall have the opportunity to respond to this presentation during the proceeding.
  7. Closing remarks. The presiding officer shall identify relevant, future rulemaking dates and shall announce the location where the record may be reviewed and the date and time of close of record.
- D.** Within 10 working days of close of the record of an oral proceeding, or a longer period if approved by the Director, the presiding officer shall file a written memorandum summarizing the contents of all oral presentations made during the proceeding, and shall transmit any original cassette tapes and written submissions to the Director.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3).

**R18-1-305. Expired****Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5018, effective August 31, 2002 (Supp. 02-4).

**R18-1-306. Written Criticism of Rule**

- A.** Any person may file a written criticism of an effective rule with the Director.
- B.** The criticism shall clearly identify the rule addressed, and specify why the existing rule is inadequate, unduly burdensome, unreasonable or otherwise considered to be improper.
- C.** The Director shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record, for review by the Department, pursuant to A.R.S. § 41-1054.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3).

**ARTICLE 4. PUBLIC NOTICE AND GENERAL PUBLIC HEARINGS****R18-1-401. Notice**

- A.** When notice is required by statute or rule, and notice procedures are not otherwise prescribed by statute or rule, the Department shall:
  1. Publish the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned;
  2. Include in the notice the following information:
    - a. The major issue under consideration or a description of the reason for the action;

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- b. The Department's proposed action and effective date for that action;
  - c. The location where relevant, nonconfidential documents may be obtained and reviewed during normal business hours;
  - d. The name, address and telephone number of a person within the Department who may be contacted for further information;
  - e. The location where public comments may be addressed, and the date and time by which comments shall be received.
- B.** In addition to meeting the requirements in subsection (A), a notice for a general public hearing shall include the following information:
- 1. The time and location of the general public hearing;
  - 2. A statement to the effect that any person may appear at the hearing and present views, either orally or in writing;
  - 3. The time by which a decision shall be reached;
  - 4. The exact nature of the action or issues to be discussed.
- C.** The notice for a general public hearing described in this Section shall be published at least 30 days prior to the date of the hearing unless otherwise prescribed by statute or rule.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3).

**R18-1-402. General Public Hearing Procedures**

- A.** If a general public hearing is required by statute or by rule, the hearing shall be noticed as required in R18-1-401.
- B.** The Department shall maximize the opportunity for public participation at a general public hearing and shall consider all of the following when scheduling the general public hearing:
- 1. A location in or near the geographical area of the issue addressed in the hearing, and easily accessible to a majority of the affected public;
  - 2. A time which can facilitate public attendance;
  - 3. Other hearings concerning the public, in the same geographical area, which may be scheduled for the same time and location.
- C.** The Department may schedule persons wishing to speak, and Department personnel knowledgeable about the issue shall be present to provide information.
- D.** A general public hearing shall be conducted so as to do both of the following:
- 1. Inform the public of the exact nature of the action or issue, and
  - 2. Allow time for persons to make statements and submit written comments.
- E.** The person presiding at a general public hearing shall maintain order and may allot equitable time periods for oral comment by participants.
- F.** A general public hearing shall be recorded by means of an electronic device or stenographically.
- G.** The record of a general public hearing shall be maintained by the Department and made available for public inspection, during normal business hours, at the location specified in the public notice. The record of the hearing shall include the agenda, written comments submitted before the close of record, and the tape or transcript of the hearing.

**Historical Note**

Adopted effective July 7, 1988 (Supp. 88-3).

**ARTICLE 5. LICENSING TIME-FRAMES****R18-1-501. Definitions**

In addition to the definitions provided in A.R.S. § 41-1001, § 41-1072, and R18-1-101, the following definitions apply to this Article:

1. "Administrative completeness" or "administratively complete" means Department receipt of all application components required by statute or rule and necessary to enable the Department to issue a notice of administrative completeness under A.R.S. § 41-1074 and thereby end the administrative completeness review time-frame and start the substantive review time-frame.
2. "Administrative completeness review" means the process of clerical verification by the Department to determine whether the submitted application components meet the requirements of administrative completeness.
3. "Applicant" means a person who requests the Department to issue a license.
4. "Applicant response" means a written response from the applicant to a Department notice that complies with all the following:
  - a. The response identifies the applicant.
  - b. The response identifies the Department notice.
  - c. The response is addressed to the Department employee identified in the Department notice as the designated recipient of the notice.
  - d. The response contains the required information identified in the Department notice or the response contains a notice under R18-1-520 to rely on the application components as submitted.
5. "Application" means a request to the Department to issue a license to the requestor when that request is in writing and complies with R18-1-502 and R18-1-503(A).
6. "Application clerk" means a Department employee with authority to receive applications for a specific license or an application component or applicant response.
7. "Application component" means a document, other written information, or fee required by statute or rule and submitted to the Department in support of an application.
8. "Companion category" means one of an association of two or more consecutive categories, shown on the license tables with paired license names, and containing a distinction between "standard" and "complex", between "without a public hearing" and "with a public hearing", or "without a public meeting" and "with a public meeting".
9. "Complex" means an application category that requires significantly more Department resources to review the application than applications processed in a companion standard category due to the size, novelty, complexity, or technical difficulty expressed in the application.
10. "Comprehensive request for additional information" means a Department notification made after the administrative completeness review time-frame that:
  - a. Contains a list of information required by statute or rule and necessary before the Department may grant the license; and
  - b. Suspends the running of days within the time-frames.
11. "Day" means business day and excludes Saturdays, Sundays, and state holidays.
12. "Department notification" or "Department notice" means written communication by the Department to an applicant in person or at the mailing or electronic address identified on the application. The Department may notify the applicant at the applicant's electronic address only if the appli-

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- cant provides that address as part of an application component. The notification is effective:
- a. If mailed, on the date of its postmark.
  - b. If delivered in person by a Department employee or agent, on the date of delivery.
  - c. If delivered electronically, on the date of delivery to the electronic address.
13. "Department receipt" of an application component or an applicant response means one of the following days:
    - a. If the component or response is handed to an application clerk by the applicant, the day of actual receipt by the application clerk.
    - b. If the component or response is mailed, five days after the postmark identifying the mailing date.
    - c. If the component or response is delivered to an electronic address of an application clerk, one day after the date of delivery to the electronic address.
    - d. If the Department notifies the applicant of receipt within five days after the date of actual receipt, the day of actual receipt of the component or response by the application clerk.
    - e. If delivered during an application moratorium or time-frame suspension declared under R18-1-518, the day after the moratorium or suspension ends.
  14. "Electronic address" means either a telephone number for facsimile document communication (fax) or an electronic mail (e-mail) address. "Electronic address" does not mean a telephone number for voice or TDD (telephone device for the deaf) communication.
  15. "Fee excusal" means the sanction imposed on a Department fund under A.R.S. § 41-1077(A) that requires the Department to excuse further fees required from the applicant by the Department.
  16. "Initial fee" means that part of the fee required to be submitted under R18-1-503(A).
  17. "License category" means a category identified on a license table.
  18. "License table" means a table within this Article.
  19. "Licensing time-frame" means any of the time-frames identified in A.R.S. §§ 41-1072 through 41-1079, the operation of which requires the Department to report its compliance level for overall time-frames to the Governor's Regulatory Review Council under A.R.S. § 41-1078(A).
  20. "Licensing time-frame agreement" means an agreement made under any of the Sections R18-1-508 through R18-1-512.
  21. "Penalty" means the sanction imposed on a Department fund under A.R.S. § 41-1077(B).
  22. "Phased application" means an application processed pursuant to a licensing time-frame agreement that allows the applicant to submit application components in two or more phases with each phase providing for administrative completeness review.
  23. "Pre-application" means the period prior to Department receipt of an applicant's first application component submittal under R18-1-503(A).
  24. "Presumptive administrative completeness" means the expiration of the administrative completeness review time-frame and the automatic start of the running of days within the substantive review time-frame under A.R.S. § 41-1074(C) as a result of the Department failing to issue a notice of administrative completeness under A.R.S. § 41-1074(A).
  25. "Presumptive overall time-frame" means the sum of the days shown for the administrative completeness review and substantive review time-frames on the license tables for that license category and may be different from the actual overall time-frame because the presumptive overall time-frame does not include a lengthening of the time-frame due to a time-frame extension agreement or a shortening of the time-frame due to early starting of the substantive review time-frame caused by the issuance of a notice of administrative completeness.
  26. "Presumptive substantive review time-frame" means the days shown for the substantive review time-frame on the license tables for a license category.
  27. "Refund" means the sanction imposed on a Department fund under A.R.S. § 41-1077(A) that requires the Department to refund fees already paid by the applicant into that fund.
  28. "Request for additional information" means a Department notification or contact made after the administrative completeness review time-frame and that identifies information required by statute or rule and necessary before the Department may grant the license.
  29. "Sanction" means a refund, fee excusal, or penalty under A.R.S. § 41-1077.
  30. "Site inspection" means an inspection performed by the Department under A.R.S. § 41-1009 as part of a required component of an application for a license shown on the license tables.
  31. "Substantive review" means the process of qualitative evaluation by the Department of application components to determine whether the components meet all requirements in statute or rule and necessary to grant the license. "Substantive review" does not include clerical verification of the components nor does it include Department investigations resulting from reporting or notification requirements.
  32. "Time-frame extension" means the entire period after the overall time-frame would otherwise expire and during which an application is not subject to sanctions. The substantive review and overall time-frames continue in effect and do not expire during the time-frame extension.
  33. "Withdrawn application" means an application that has ceased to be subject to this Article due to the applicant's request that the Department cease all consideration of the application under R18-1-517. An applicant's ability to withdraw an application is not governed by this Article.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**R18-1-502. Applicability; Effective Date**

- A. This Article does not apply to any of the following:
1. A license not requiring an application.
  2. A license conferred by a notification to the Department of an event, activity, or facility and that is not conferred by the Department in the form of a written license issued to the prospective licensee in response to the notification.
  3. A license issued at the Department's initiative.
  4. A license issued by default if the Department does not make a licensing decision within a time identified in statute or rule.

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5. A license not identified in a category shown on the license tables.
  6. A license required under an abatement or compliance order or consent agreement, if a time-frame in the order or consent agreement is different than the time-frame for the license category. The time-frame in the order or consent agreement shall supersede the time-frame for the license category.
  7. An application for which the applicant is not the prospective licensee.
  8. Compliance activity by licensees in conformance with an issued license except for license renewal or revision activity.
  9. Contractual activity under A.R.S. § 41-1005(A)(15).
  10. Activity that leads to the revocation, suspension, annulment, or withdrawal of a license.
- B.** If an application becomes subject to this Article, it remains subject to the terms of the original license category in which it was classified unless the application is withdrawn, is altered by a licensing time-frames agreement, or is changed under R18-1-516. If altered by a licensing time-frames agreement, the terms of the original license category are modified only to the extent expressly stated in the licensing time-frames agreement.
- C.** If an Arizona statute or other rule in this Title conflicts with this Article, the statute or other rule governs except that only this Article determines whether an applicant is entitled to a refund and fee excusal due to Department failure to notify an applicant of a licensing decision within a licensing time-frame under A.R.S. § 41-1077(A).
- Historical Note**  
New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).
- R18-1-503. Administrative Completeness Review Time-frame Operation; Administrative Completeness**
- A.** The administrative completeness review time-frame for an application begins on the day of Department receipt of the first component submittal in support of the application that contains all the following:
1. Identification of the applicant.
  2. If the license is for a facility, identification of the facility.
  3. Name and mailing address of the applicant and, if applicable, the applicant's agent authorized by the applicant to receive all notices issued by the Department under this Article.
  4. Identification of the license category in which the application shall be first processed. If companion categories are shown on a license table for this license, the application shall be first processed in the companion category that is determined as follows:
    - a. If "standard" and "complex" categories are shown, in the "standard" category.
    - b. If "without a public hearing" and "with a public hearing" are shown, in the "without a public hearing" category.
    - c. If "without a public meeting" and "with a public meeting" are shown, in the "without a public meeting" category.
  5. Completed Department application form if required for the license category.
  6. Initial fee if required for the license category.
7. All application components required by statute or rule necessary for the Department to determine whether an application is administratively complete.
- B.** The administrative completeness review time-frame for an application ends on the earlier of the following days:
1. The day the Department notifies the applicant that the application is administratively complete under A.R.S. § 41-1074.
  2. If the Department does not notify the applicant that the application is administratively complete under A.R.S. § 41-1074, the last day shown for the administrative completeness review time-frame for the relevant license category on the license tables.
- C.** If a notice of administrative deficiencies states that the Department is suspending the running of days within the time-frames until the applicant supplies the missing information identified on a comprehensive list of specific deficiencies included with the notice, the running of days within the administrative completeness review time-frame suspends on the day of notification.
- D.** If suspended, the running of days within the administrative completeness review time-frame remains suspended from the time of the first notice under subsection (C) of this Section until the applicant supplies the Department all missing information identified on the comprehensive list of specific deficiencies.
- E.** If the Department determines that an applicant has submitted all application components required by statute or rule within the administrative completeness review time-frame and necessary to allow the Department to grant the license, the Department shall notify the applicant that the application is administratively complete under A.R.S. § 41-1074.
- F.** If presumptive administrative completeness occurs:
1. Further notices of administrative deficiencies issued under subsection (C) of this Section will not suspend the running of days within the substantive review or overall time-frames and
  2. The Department does not waive the requirement for the applicant to submit all application components necessary to allow the Department to grant the license.
- G.** The running of days within the administrative completeness review time-frame also suspends and resumes under R18-1-518 (emergencies).
- Historical Note**  
New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).
- R18-1-504. Substantive Review Time-frame Operation; Requests for Additional Information**
- A.** The substantive review time-frame for an application begins on one of the following days:
1. If the Department notifies the applicant that the application is administratively complete before the expiration of the administrative completeness review time-frame, one day after notification.
  2. If the Department does not notify the applicant that the application is administratively complete before the expiration of the administrative completeness review time-frame, one day after expiration.
- B.** The substantive review time-frame for an application ends on the earlier of the following days:

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1. The day of Department notification that it has made a licensing decision under A.R.S. § 41-1076 and R18-1-507.
  2. The last day shown for the substantive review time-frame for the license category on the license tables.
- C.** If the Department notifies the applicant to respond to a comprehensive request for additional information, the running of days within the substantive review time-frame is suspended beginning on the day of Department notification. The Department may issue only one comprehensive request that suspends the running of days within the substantive review time-frame under A.R.S. § 41-1075(A).
- D.** The running of days within the substantive review time-frame remains suspended from the time of the notice under subsection (C) until the applicant supplies all missing information to the Department.
- E.** The running of days within the substantive review time-frame also suspends and resumes under R18-1-518 (emergencies).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**R18-1-505. Overall Time-frame Operation**

- A.** The overall time-frame for an application begins on the same day as the administrative completeness review time-frame.
- B.** The running of days within the overall time-frame suspends and resumes in concert with the administrative completeness and substantive review time-frames and time-frame extensions.
- C.** The duration of the overall time-frame equals the sum of all the following days unless altered by R18-1-508 (licensing time-frames pre-application agreements) or R18-1-511 (changed licensing time-frames agreements):
1. The lesser of:
    - a. The number of days shown for the administrative completeness review time-frame on the license tables, or
    - b. The actual number of days for the administrative completeness review time-frame if the Department notifies the applicant under R18-1-503(E) that the application is administratively complete before the expiration of the administrative completeness review time-frame;
  2. The lesser of:
    - a. The number of days shown for the substantive review time-frame on the license tables,
    - b. The actual number of days for the substantive review time-frame if the Department notifies the applicant of a licensing decision under R18-1-504(B)(1), or
    - c. The actual number of days for the substantive review time-frame if the applicant causes the time-frames to end under R18-1-507(D); and
  3. The number of days added by one or more licensing time-frames extension agreements under R18-1-510.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**R18-1-506. Time-frame Extension Operation**

- A.** If created by a licensing time-frames extension agreement under R18-1-510, the time-frame extension for an application begins one day after the substantive review and overall time-frames would otherwise expire and operates as if they were still in operation.
- B.** The time-frame extension for an application ends on one of the following days, whichever is earlier:
  1. The day of Department notification that it has made a licensing decision under A.R.S. § 41-1076 and R18-1-507.
  2. The day shown for the expiration of the time-frame extension identified in the time-frame extension agreement.
- C.** The Department may notify an applicant to respond to one comprehensive request for additional information during the time-frame extension on the same terms as prescribed in R18-1-504 except that the Department shall not make more than one comprehensive request for additional information under both R18-1-504 and this Section.
- D.** An applicant and the Department may enter into one or more licensing time-frames supplemental request agreements during the time-frame extension on the same terms as prescribed in R18-1-509.
- E.** The running of days within the time-frame extension also suspends and resumes under R18-1-518 (emergencies).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-507. Ending of Time-frames; Licensing Decisions; Withdrawal; Notice of Licensing Time-frames Nonapplicability**

- A.** Department notification of the grant or denial of a license ends the running of all licensing time-frames for an application.
- B.** The Department may deny a license if the applicant submits incomplete or inaccurate information in response to a notice of administrative deficiencies under R18-1-503, a request for additional information or a comprehensive request for additional information under R18-1-504, a supplemental request for additional information under R18-1-509, or any other deficiency in the application that prevents the Department from exercising its authority to grant the license.
- C.** The Department may deny a license if the applicant fails to respond in a reasonably timely manner to a notice of administrative deficiencies under R18-1-503, a request for additional information or a comprehensive request for additional information under R18-1-504, or a supplemental request for additional information under R18-1-509, and the deficiency in the application prevents the Department from exercising its authority to grant the license. In determining whether an applicant has failed to respond to a notice or request in a reasonably timely manner and the deficiency in the application prevents the Department from exercising its authority to grant the license, the Department shall consider the following factors:
  1. The nature of the information requested.
  2. The time that an applicant has been given in the notice or request to respond relative to the overall time-frame for that category of license.
  3. The extent to which the Department's ability to process applications for that license category or related license categories is adversely affected by overdue responses for information.
- D.** Department notice of the denial of a license shall include all the following:
  1. A justification for the denial under A.R.S. § 41-1076(1).

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2. An explanation of the applicant's right to appeal the action under A.R.S. §§ 41-1076(2) and 41-1092.03(A).
3. An explanation of the applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
- E.** The following actions by the applicant are sufficient to end all time-frames for an application:
1. Withdrawing the application under R18-1-517.
  2. Entering into a changed licensing time-frames agreement under R18-1-511.
- F.** If the Department determines during its review of an application that the application is not subject to this Article, the Department shall notify the applicant that the application is not subject to this Article. The Department notification shall contain the Department's reason for making the determination. Department notification under this subsection causes all time-frames for the application to end.
- Historical Note**  
New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).
- R18-1-508. Licensing Time-frames Pre-application Agreements**
- A.** An applicant and the Department may enter into a licensing time-frames pre-application agreement to allow the applicant to do one or more of the following:
1. Submit certain application components in one or more phases during the substantive review time-frame.
  2. Coordinate the licensing time-frames requirements of this Article with expedited application review by a private consultant under contract with the Department for that purpose.
  3. Coordinate the licensing time-frames requirements of this Article with an applicant's requirements to apply for and obtain other approvals reasonably related to the subject matter of the application.
- B.** A licensing time-frames pre-application agreement shall contain at least the following terms:
1. Unless otherwise specified in the agreement, all requirements of this Article remain in effect.
  2. A waiver under A.R.S. § 41-1004 by the applicant of its rights to the number of time-frame days identified on the license tables in consideration of the Department allowing the applicant to enter into a licensing time-frames pre-application agreement.
  3. Identification of application components.
  4. The number of days for the administrative completeness review time-frame and the substantive review time-frame. Time spent in pre-application review shall not count toward the running of days within the time-frames.
  5. A fee adjustment, if appropriate.
  6. Identification of the license category within which the Department shall begin processing the application.
- C.** A licensing time-frames pre-application agreement that allows the applicant to submit certain application components in one or more phases during the substantive review time-frame shall contain at least the terms identified in subsection (B) of this Section and the following terms:
1. The overall time-frame shall not be less than the presumptive overall time-frame identified in subsection (B)(6) of this Section.
  2. The administrative completeness review time-frame shown for the license category identified in subsection (B)(6) of this Section shall apply only to the first application phase.
  3. The applicant may submit components otherwise required for administrative completeness in subsequent phases during the substantive review time-frame only to the extent that the agreement specifies deadlines for each subsequent application phase and identifies the application components required in each subsequent phase. The Department may notify the applicant to respond to a notice of administrative deficiencies within 15 days after each subsequent submittal or the deadline identified in the agreement for each subsequent phased application component submittal.
  4. The Department may suspend the running of days within the time-frames once in each application phase with a comprehensive request for additional information on the same terms as prescribed under R18-1-504.
- D.** The Department shall consider all the following factors when determining whether to enter into a licensing time-frames pre-application agreement:
1. The complexity of the licensing subject matter. The Department shall not enter into an agreement if the presumptive substantive review time-frame is less than 90 days.
  2. The resources of the Department. The Department shall not enter into an agreement if the Department determines that either the negotiation of the agreement or the terms of the agreement are likely to require the Department to expend additional resources to the significant detriment of other applicants.
  3. The impact on public health and safety or the environment. The Department shall not enter into an agreement if the Department determines that the terms of the agreement are likely to cause a significant increase or change in the nature of the potential detrimental effects of the facility or activity to be governed by the license on public health and safety or the environment.
- Historical Note**  
New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).
- R18-1-509. Licensing Time-frames Supplemental Request Agreements**
- A.** An applicant and the Department may enter into one or more licensing time-frames supplemental request agreements to allow the suspension of the running of days within the relevant substantive review and overall time-frames and time-frame extensions pending a response from the applicant to a supplemental request for additional information under A.R.S. § 41-1075(A). A request for additional time alone is not a valid justification for a supplemental request agreement.
- B.** A licensing time-frames supplemental request agreement shall contain at least the following terms:
1. Unless otherwise specified in the agreement, all requirements of this Article remain in effect.
  2. A list of the additional information requested.
  3. The running of days within the relevant substantive review and overall time-frames and time-frame extensions shall suspend and resume under Sections R18-1-504 through R18-1-506.

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**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-510. Licensing Time-frames Extension Agreements**

- A. An applicant and the Department may enter into one or more time-frames extension agreements to extend the substantive review and overall time-frames under A.R.S. § 41-1075(B).
- B. The total of all time-frames extension agreements may extend the time-frames no more than 25% of the number of days beyond the presumptive overall time-frame or, if identified as a fixed number in an R18-1-508 pre-application agreement, the presumptive overall time-frame in that agreement. A calculation that results in a fraction of a day shall be rounded to the nearest day.
- C. A time-frames extension agreement shall contain at least the following terms:
  1. Unless specified otherwise in the agreement, all requirements of this Article remain in effect.
  2. The number of time-frame extension days.
  3. The agreement creates a time-frame extension that operates under R18-1-506.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-511. Licensing Time-frames Changed Application Agreements**

- A. An applicant and the Department may enter into a licensing time-frames agreement to allow the applicant to change information previously submitted in support of a license application and to supersede the time-frames of that application with new time-frames. A changed licensing time-frames agreement causes all time-frames on the application to end under R18-1-507(D) and creates a new set of time-frames that operates under the agreement.
- B. A changed licensing time-frames agreement shall contain at least the following terms:
  1. Unless specified otherwise in the agreement, all requirements of this Article remain in effect.
  2. A waiver under A.R.S. § 41-1004 by the applicant of its rights to the number of time-frame days identified on the license tables in consideration of the Department allowing the applicant to change the information submitted in support of a changed application.
  3. Identification of application components required in support of the changed application.
  4. The number of time-frame days applicable to the changed application.
  5. A fee adjustment, if appropriate.
  6. Identification of the license category within which the Department shall continue processing the changed application.
- C. The Department shall consider all the following factors when determining whether to enter into a changed licensing time-frames agreement:
  1. The complexity of the licensing subject matter. The Department shall not enter into an agreement if the presumptive substantive review time-frame is less than 30 days.
  2. The resources of the Department. The Department shall not enter into an agreement if the Department determines that either the negotiation of the agreement or the terms of the agreement are likely to require the Department to

expend additional resources to the significant detriment of other applicants.

3. The impact on public health and safety or the environment. The Department shall not enter into an agreement if the Department determines that the terms of the agreement are likely to cause a significant increase or change in the nature of the potential detrimental effects of the facility or activity to be governed by the license on public health and safety or the environment.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-512. Reserved****R18-1-513. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Section repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**R18-1-514. Reserved****R18-1-515. Reserved****R18-1-516. Reassignment of License Category**

- A. The Department may reassign an application to a different category if an evaluation of the application components indicates that a change is necessary in the category in which the application is classified. The Department shall notify the applicant of the change in the license category at which time the reassignment shall take effect. The Department notice shall contain the Department's reason for making the reassignment to a different license category. After receiving Department notification, the applicant may submit an R18-1-521 notice of intent to rely on the license category in effect before Department notification.
- B. If a public hearing or public meeting is requested for an application for a license that requires the Department to hold a public hearing or public meeting on a proposed licensing decision if requested, the Department shall reassign the application from a license category not providing for a public hearing or public meeting to the companion category so providing.
- C. Reassignment may include a change from a standard to a companion complex category if such categories are shown on the license tables.
- D. Reassignment to a new license category under this Section means only that the time-frames for the application expire on the days shown for the new license category rather than the previous category.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-517. Application Withdrawal**

Withdrawal of an application causes all time-frames for that application to end.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-518. Emergencies and Upset Conditions**

- A. The Director may declare a moratorium on the starting of time-frames for new applications or may declare a suspension

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of all time-frames for one or more license categories identified on the license tables upon a determination that the starting of time-frames for new applications or the continued running of days within the time-frames on existing applications in that license category is likely to result in sanctions for those applications due to emergencies including:

1. Diversion of Department resources to respond to pollution prevention emergency activity,
  2. Loss of use of premises,
  3. Computer failure, or
  4. Lack of access to a site inspection location due to weather or other natural conditions.
- B.** A declaration of a time-frame moratorium or suspension under subsection (A) of this Section shall be in writing and shall include all the following:
1. The reason for the time-frame moratorium or suspension.
  2. Identification of the license categories subject to the time-frame moratorium or suspension.
  3. If relevant, restriction of the declaration to one or more application review or site inspection locations.
  4. Expiration of the time-frame moratorium or suspension by a date certain.
- C.** The Director may revoke declarations or issue successive declarations. The Director shall ensure that the duration of a time-frame moratorium or suspension under subsection (A) of the Section is limited to the shortest time necessary to address the emergency.
- D.** A declaration of a time-frame moratorium or suspension under subsection (A) of this Section affects only the operation of the time-frames and does not prohibit the Department from acceptance or continued review of license applications.
- E.** A declaration of a time-frame moratorium or suspension under subsection (A) of this Section applies only to applications and license categories that are subject to sanctions

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-519. Public Hearings; Public Meetings; Public Notice Periods**

The suspension or expiration of the substantive review time-frame does not invalidate public hearings, public meetings, or public notice periods required by law to occur before a decision by the Department to grant a license.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-520. Notice of Intent to Rely on the Application Components as Submitted**

- A.** An applicant, instead of submitting some or all of the application components identified by the Department, may submit an R18-1-205 notice of intent to rely on the application components as submitted in response to either of the following:
1. Receiving a notice of administrative deficiencies issued by the Department during the administrative completeness review time-frame.
  2. Receiving a comprehensive request for additional information or a supplemental request for additional information issued by the Department after the administrative completeness review time-frame.
- B.** If the Department decides under R18-1-205 to rescind or modify the identification of the application component or components objected to by the applicant, the Department shall make

the decision within 15 days after Department receipt of the applicant's R18-1-205 notice. If, at the time of the decision, the running of days within the time-frames is suspended:

1. A decision to rescind the identification of all application components identified in the notice shall resume the running of days within the time-frames.
  2. A decision to rescind less than all or to modify the identification of one or more application components identified in the notice, shall allow the running of days within the time-frames to remain suspended in accordance with the Department notice identified in subsections (A)(1) or (A)(2) of this Section.
- C.** If, within 15 days after Department receipt of the applicant's R18-1-205 notice, the Department has not notified the applicant of a decision to rescind or modify the identification of the application component or components complained of in the notice, the running of days within the time-frames, if suspended, shall resume.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-521. Notice of Intent to Rely on the License Category**

- A.** Upon Department notification that the Department has changed the license category under R18-1-516, an applicant may submit a notice of intent to rely on the license category in effect before the Department notification.
- B.** The applicant's notice under subsection (A) of this Section shall include all of the following:
1. Identification of the applicant.
  2. Identification of the license application.
  3. Identification of the date of the Department notice.
  4. A statement that the applicant intends to rely on the license category in effect before Department notification of the R18-1-516 license category change as the basis upon which the Department shall make a licensing decision.
- C.** Upon receipt of an applicant's notice under subsection (A) of this Section, the Department shall do one of the following:
1. Rescind the change under subsection (D) of this Section.
  2. Make a licensing decision under R18-1-507(A) and process the decision in the changed category identified under R18-1-516.
  3. Allow the license category to revert under subsection (E) of this Section.
- D.** If the Department decides to rescind the change in the license category, the Department shall notify the applicant of the decision within 15 days after Department receipt of the applicant's notice under subsection (A) of this Section and shall continue to process the application in the license category on which the applicant is relying.
- E.** If, within 15 days after Department receipt of the applicant's notice under subsection (A) of this Section, the Department has not notified the applicant of a decision under subsection (C) of this Section, the license category shall revert to the category in effect before the R18-1-516 Department notification with the same effect on the time-frames as described in subsection (D) of this Section.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-522. Notice of Change of Applicant's Agent for Receiving Licensing Time-frames Notices**

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- A. An applicant may change the designation of its agent identified under R18-1-503(A)(3) for receiving Department licensing time-frames notification.
- B. To change the designation of the agent, the applicant shall submit a notice that complies with all the following to the application clerk:
  1. Identification of the applicant.
  2. Identification of the application.
  3. Name and mailing address of the current agent authorized to receive all notices issued by the Department under this Article.
  4. Name and mailing address of the new agent authorized to receive all notices issued by the Department under this Article.
  5. Date when the applicant's authorization of the new agent will be effective.
  6. Certification by the applicant that the information given under this subsection is true.
- C. Upon Department receipt of the applicant's notice under subsection (B) of this Section, the Department shall notify the applicant of the date of receipt. The effective date of the change of applicant's agent shall not be less than three days after Department receipt of the notice.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-523. Refunds, Fee Excusals, and Penalties**

- A. An application is subject to sanctions under A.R.S. § 41-1077 only if the application is governed by this Article and requires a fee that is deposited in a Department fund. In addition, an application is subject to penalties under A.R.S. § 41-1077(B) only if it is subject to a substantive review time-frame as indicated on the license tables. An application withdrawn before the expiration of the overall time-frame is not subject to sanctions.
- B. The Department shall make a refund and fee excusal to an applicant for an application if the Department determines both of the following:
  1. The overall time-frame for that application expired prior to Department notification of a licensing decision under R18-1-507(A).
  2. The applicant is the prospective licensee of the application.
- C. The Department shall issue a refund and make a fee excusal within 15 days after the Department makes a determination that a refund and fee excusal is due.
- D. A refund and fee excusal is limited to the specific application giving rise to the refund and fee excusal and does not include a refund or payment excusal for services requested by the applicant beyond the scope of the application. A refund is limited to the amount actually received from the applicant by the Department for the review of the specific application giving rise to the refund and does not include interest.
- E. The Department shall pay to the state general fund a penalty for an application if the Department determines both of the following:

1. The overall time-frame for that application expired prior to Department notification of a licensing decision under R18-1-507(A)
  2. On the last calendar day of the month, the Department still has not made a licensing decision under R18-1-507(A).
- F. If an application accumulates excused fees, the Department shall calculate the penalty each month to include both the penalty due for the current month plus any additional penalties now due for previous months resulting from the continued accumulation of excused fees during the current month.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-524. Site Inspections**

- A. If a site inspection is a required application component for a license category, an applicant complies with the requirement to submit a site inspection application component if either of the following is met:
  1. The applicant makes all necessary areas of a site available for inspection by the Department at a mutually agreed-upon time and for the period of time necessary for the Department to complete the site inspection.
  2. The Department determines that the conditions of a license are such that a site inspection will provide no additional required information in order for the Department to make a licensing decision under R18-1-507(A)(1) or R18-1-507(A)(2).
- B. If made, a site inspection shall be performed under A.R.S. § 41-1009. The purpose of a site inspection application component is to allow the Department to identify what site specific facts may be determinative of required license conditions in order to make a licensing decision under R18-1-507(A)(1) or R18-1-507(A)(2).
- C. The Department shall prepare an inspection report under A.R.S. § 41-1009(D) for every site inspection made. The inspection report shall state both of the following:
  1. The Department's action resulting from the inspection is completed.
  2. Whether the applicant complied with subsection (A)(1) of this Section.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**R18-1-525. Licensing Time-frames; Application Components**  
The administrative completeness review time-frame days, the substantive review time-frame days, and the references to application components for each license category subject to this Article are shown on the license tables.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

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Table 1. Class I Air Licenses

**Class I Air Licenses**  
**Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Individual Class I prevention of significant deterioration (PSD) licenses:</b>				
1. Standard Class I PSD major source permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-406.	41	219	Yes	A.A.C. R18-2-304, R18-2-402, and R18-2-406, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
2. Standard Class I PSD major source permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-406.	41	251	Yes	A.A.C. R18-2-304, R18-2-402, and R18-2-406, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
3. Complex Class I PSD major source permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-406.	41	281	Yes	A.A.C. R18-2-304, R18-2-402, and R18-2-406, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
4. Complex Class I PSD major source permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-406.	41	313	Yes	A.A.C. R18-2-304, R18-2-402, and R18-2-406, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
<b>Group II: Individual Class I major new source review (NSR) licenses:</b>				
5. Standard Class I major NSR permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-403.	41	219	Yes	A.A.C. R18-2-304, R18-2-402, R18-2-403, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
6. Standard Class I major NSR permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-403.	41	251	Yes	A.A.C. R18-2-304, R18-2-402, R18-2-403, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
7. Complex Class I major NSR permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-403.	41	281	Yes	A.A.C. R18-2-304, R18-2-402, R18-2-403, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
8. Complex Class I major NSR permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-403.	41	313	Yes	A.A.C. R18-2-304, R18-2-402, and R18-2-403, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
<b>Group III: Individual Class I other major source licenses:</b>				
9. Standard Class I other major source permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302.	41	344	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and fee required.

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CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 1. Class I Air Licenses**

**Class I Air Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
SRTF means Substantive Review Time-frame.  
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
10. Standard Class I other major source permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302.	41	376	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and fee required.
<b>Group III (Continued): Individual Class I other major source licenses:</b>				
11. Complex Class I other major source permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302.	41	406	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and fee required.
12. Complex Class I other major source permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302.	41	438	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and fee required.
<b>Group IV: Individual Class I renewal licenses:</b>				
13. Standard Class I renewal permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-322.	41	344	No	A.A.C. R18-2-304 Department application form, site inspection, required.
14. Standard Class I renewal permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-322.	41	376	No	A.A.C. R18-2-304 Department application form, site inspection, required.
15. Complex Class I renewal permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and, R18-2-322.	41	406	No	A.A.C. R18-2-304 Department application form, site inspection, required.
16. Complex Class I renewal permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-322.	41	438	No	A.A.C. R18-2-304 Department application form, site inspection, required.
<b>Group V: Individual Class I transfer, amendment, and revision licenses:</b>				
17. Class I transfer, A.R.S. § 49-429, A.A.C. R18-2-302 and R18-2-323.	5	10	Yes	A.A.C. R18-2-323, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
18. Class I administrative amendment, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-318.	10	41	No	A.A.C. R18-2-318, Site inspection required.
19. Class I minor revision, A.R.S. §§ 49-426.01, A.A.C. R18-2-302 and R18-2-319.	41	103	Yes	A.A.C. R18-2-319, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
20. Standard Class I significant revision with no public hearing, A.R.S. §§ 49-426.01, A.A.C. R18-2-302 and R18-2-320.	41	344	Yes	A.A.C. R18-2-304, Fee: A.A.C. R18-2-326, Department application form, site inspection, and initial fee required

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Table 1. Class I Air Licenses

License Category	Class I Air Licenses Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements			Application Components
	ACRTF Days	SRTF Days	Subject to Sanctions	
21. Standard Class I significant revision with a public hearing, A.R.S. §§ 49-426.01, A.A.C. R18-2-302 and R18-2-320.	41	376	Yes	A.A.C. R18-2-304, Fee: A.A.C. R18-2-326, Department application form, site inspection, and initial fee required
22. Complex Class I significant revision with no public hearing, A.R.S. §§ 49-426.01, A.A.C. R18-2-302 and R18-2-320.	41	406	Yes	A.A.C. R18-2-304, Fee: A.A.C. R18-2-326, Department application form, site inspection, and initial fee required
<b>Group V (Continued): Individual Class I transfer, amendment, and revision licenses:</b>				
23. Complex Class I significant revision with a public hearing, A.R.S. §§ 49-426.01, A.A.C. R18-2-302 and R18-2-320.	41	438	Yes	A.A.C. R18-2-304, Fee: A.A.C. R18-2-326, Department application form, site inspection, and initial fee required.
<b>Group VI: Authority to operate (ATO) under Class I general permit licenses:</b>				
24. Class I general permit petition, A.R.S. § 49-426(H), A.A.C. R18-2-302 and R18-2-502(B).	21	61	No	A.A.C. R18-2-502(B).
25. Class I general coverage ATO new permit, A.R.S. § 49-426(H), A.A.C. R18-2-302 and R18-2-503.	21	103	Yes	A.A.C. R18-2-503, Fee: R18-2-511, Department application form, site inspection, and initial fee required.

**Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

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**Table 2. Class II Air Licenses**

**Class II Air Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Individual Class II new licenses:</b>				
1. Standard Class II permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302.	41	240	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
2. Standard Class II permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302.	41	272	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
3. Complex Class II permit with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302.	41	302	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
4. Complex Class II permit with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302.	41	334	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
<b>Group II: Individual Class II renewal licenses:</b>				
5. Standard Class II renewal with no public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-322.	41	240	No	A.A.C. R18-2-304, Department application form and site inspection required.
6. Standard Class II renewal with a public hearing, A.R.S. § 49-426, A.A.C. R18-2-302 and R18-2-322.	41	272	No	A.A.C. R18-2-304, Department application form and site inspection required.
<b>Group III: Individual Class II transfer, amendment, and revision licenses:</b>				
9. Class II transfer, A.R.S. § 49-429, A.A.C. R18-2-302, R18-2-323.	5	10	Yes	A.A.C. R18-2-323, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
10. Class II administrative amendment, A.R.S. § 49-426, A.A.C. R18-2-302, R18-2-318.	10	41	No	A.A.C. R18-2-318.
11. Class II minor revision, A.R.S. § 49-426.01, A.A.C. R18-2-302 and R18-2-319.	41	62	Yes	A.A.C. R18-2-319, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
12. Standard Class II significant revision with no public hearing, A.R.S. § 49-426.01, A.A.C. R18-2-302 and R18-2-320.	41	198	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
13. Standard Class II significant revision with a public hearing, A.R.S. § 49-426.01, A.A.C. R18-2-302 and R18-2-320.	41	230	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and initial fee required.

**Group III (Continued): Individual Class II transfer, amendment, and revision licenses:**

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## CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 2. Class II Air Licenses**

**Class II Air Licenses**  
**Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
14. Complex Class II significant revision with no public hearing, A.R.S. § 49-426.01, A.A.C. R18-2-302 and R18-2-320.	41	260	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
15. Complex Class II significant revision with a public hearing, A.R.S. § 49-426.01, A.A.C. R18-2-302 and R18-2-320.	41	292	Yes	A.A.C. R18-2-304, Fee: R18-2-326, Department application form, site inspection, and initial fee required.
<b>Group IV: Authority to operate (ATO) under general permit licenses.</b>				
16. Class II general permit petition, A.R.S. § 49-426(H), A.A.C. R18-2-302 and R18-2-502(B).	21	61	No	A.A.C. R18-2-502(B).
17. Class II general coverage ATO new permit, A.R.S. § 49-426(H), A.A.C. R18-2-302 and R18-2-503.	21	103	Yes	A.A.C. R18-2-503, Fee: R18-2-511, Department application form, site inspection, and initial fee required.
16. Class II general permit petition, A.R.S. § 49-426(H), A.A.C. R18-2-302 and R18-2-502(B).	21	61	No	A.A.C. R18-2-502(B).
17. Class II general coverage ATO new permit, A.R.S. § 49-426(H), A.A.C. R18-2-302 and R18-2-503.	21	103	Yes	A.A.C. R18-2-503, Fee: R18-2-511, Department application form, site inspection, and initial fee required.
18. Class II general coverage ATO renewal permit, A.R.S. § 49-426(H), A.A.C. R18-2-302 and R18-2-505.	21	103	Yes	A.A.C. R18-2-505, Fee: R18-2-511, Department application form, site inspection, and initial fee required.
19. Class II general coverage ATO variance, A.R.S. § 49-426(H), A.A.C. R18-2-507.	21	103	No	A.A.C. R18-2-507, Department application form and site inspection required.

**Historical Note**

Table 2 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

**Table 3. Open Burning Licenses**

**Open Burning Licenses**  
**Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
1. Dangerous material open burning permit, A.R.S. § 49-501, A.A.C. R18-2-602.	5	21	No	A.A.C. R18-2-602(D)(2), Department application form required.

**Historical Note**

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Table 3 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 3-N. Repealed**

**Historical Note**

Table 3-N adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Historical Note**

Table 3-S adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 3-S. Repealed**

**Table 4. Vehicle Emission Licenses**

**Vehicle Emission Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
SRTF means Substantive Review Time-frame.  
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
1. Fleet station permit, A.R.S. § 49-546, A.A.C. R18-2-1019, R18-2-1026.	15	21	No	A.A.C. R18-2-1019, Department application form required.
2. Emissions analyzer/opacity meter registration, A.R.S. §§ 49-542(J)(4) and 49-546(A)(2), A.A.C. R18-2-1027.	10	10	No	A.A.C. R18-2-1027, Department application form and site inspection required.

**Historical Note**

Table 4 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 5. Safe Drinking Water Construction Licenses**

**Safe Drinking Water Construction Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
SRTF means Substantive Review Time-frame.  
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Drinking water approval-to-construct (ATC) licenses:</b>				
1. Standard drinking water treatment facility, project, or well approval to construct, A.R.S. § 49-353, A.A.C. R18-5-505.	16	37	Yes	A.A.C. R18-5-505, Department application form and site inspection required.
2. Complex drinking water treatment facility, project, or well approval to construct, A.R.S. § 49-353, A.A.C. R18-5-505.	16	67	Yes	A.A.C. R18-5-505, Department application form and site inspection required.
3. Standard public and semi-public swimming pool design approval, A.R.S. § 49-104(B)(12).	26	26	Yes	A.A.C. R18-5-203, Department application form and site inspection required.
4. Complex public and semi-public swimming pool design approval, A.R.S. § 49-104(B)(12).	26	67	Yes	A.A.C. R18-5-203, Department application form and site inspection required.

**Group II: Drinking water approval-of-construction (AOC) licenses:**

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**Table 5. Safe Drinking Water Construction Licenses**

**Safe Drinking Water Construction Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
5. Standard drinking water treatment facility, project, or well approval of construction, A.R.S. § 49-353, A.A.C. R18-5-507.	16	37	Yes	A.A.C. R18-5-507, Department application form and site inspection required.
6. Complex drinking water treatment facility, project, or well approval of construction, A.R.S. § 49-353, A.A.C. R18-5-507.	16	67	Yes	A.A.C. R18-5-507, Department application form and site inspection required.
<b>Group II (Continued): Drinking water approval-of-construction (AOC) licenses:</b>				
7. Standard public and semi-public swimming pool approval of construction, A.R.S. § 49-104(B)(12).	26	26	Yes	A.A.C. R18-5-204, Department application form and site inspection required.
8. Complex public and semi-public swimming pool approval of construction, A.R.S. § 49-104(B)(12).	26	67	Yes	A.A.C. R18-5-204, Department application form and site inspection required.
<b>Group III: Other licenses:</b>				
9. Standard drinking water new source approval, A.R.S. § 49-353, A.A.C. R18-5-505.	16	37	Yes	A.A.C. R18-5-505, Department application form and site inspection required.
10. Complex drinking water new source approval, A.R.S. § 49-353, A.A.C. R18-5-505.	16	67	Yes	A.A.C. R18-5-505, Department application form and site inspection required.
11. Drinking water time extension approval, A.R.S. § 49-353, A.A.C. R18-5-505.	16	16	Yes	A.A.C. R18-5-505, Department application form required.

**Historical Note**

Table 5 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 5-N. Repealed**

by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1).

**Historical Note**

Table 5-N adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 6-E. Repealed**

**Historical Note**

Table 6-E adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1).

**Table 5-S. Repealed**

**Historical Note**

Table 5-S adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 6-N. Repealed**

**Historical Note**

Table 6-N adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1).

**Table 6. Repealed**

**Historical Note**

Table 6 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed

**Table 6-S. Repealed**

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CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Historical Note**

Table 6-S adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed

by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1).

**Table 7. Pesticide Contamination Prevention Licenses**

**Pesticide Contamination Prevention Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
SRTF means Substantive Review Time-frame.  
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
1. New pesticide approval A.R.S. § 49-310 A.A.C. R18-6-102	62	124	No	A.A.C. R18-6-102
2. Active ingredient or pesticide criticality determination A.R.S. § 49-303 A.A.C. R18-6-103	21	41	No	A.A.C. R18-6-102
3. Pesticide addition or deletion to groundwater protection list approval A.R.S. § 49-305 A.A.C. R18-6-301	21	41	No	A.A.C. R18-6-301
4. Conditional pesticide registration A.R.S. § 49-310 A.A.C. R18-6-102(B)(2)	21	41	No	A.R.S. § 49-310

**Historical Note**

Table 7 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed; new Table made by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 7-N. Repealed**

**Historical Note**

Table 7-N adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1).

**Historical Note**

Table 7-S adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1).

**Table 7-S. Repealed**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 8. Safe Drinking Water Monitoring and Treatment Licenses**

**Safe Drinking Water Monitoring and Treatment Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Safe drinking water monitoring, sample, and sample site change and waiver licenses:</b>				
1. Monitoring frequency change approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-206(G)(1), R18-4-206(G)(2), R18-4-206(J), R18-4-206(K)(1), R18-4-206(K)(2), R18-4-207(H)(1), R18-4-207(H)(2), R18-4-208(E), R18-4-208(F), R18-4-209(G), R18-4-212(E), R18-4-212(F), R18-4-212(G)(1), R18-4-212(G)(2), R18-4-212(I)(3), R18-4-213(A), R18-4-214(F), R18-4-214.01(H), R18-4-214.01(L), R18-4-214.02(G), R18-4-214.02(K), R18-4-216(E), R18-4-216(G)(1), R18-4-216(G)(2), R18-4-216(H)(3), R18-4-217(D), R18-4-217(E), R18-4-217(F), R18-4-310(D), R18-4-310(D)(2), R18-4-313(J), R18-4-313(K), R18-4-313(M)(1), R18-4-313(M)(2), R18-4-313(M)(3), R18-4-403(A)(1), R18-4-403(A)(2).	15	27	No	A.A.C. R18-4-206(G)(1), R18-4-206(G)(2), R18-4-206(J), R18-4-206(K)(1), R18-4-206(K)(2), R18-4-207(H)(1), R18-4-207(H)(2), R18-4-208(E), R18-4-208(F), R18-4-209(G), R18-4-212(E), R18-4-212(F), R18-4-212(G)(1), R18-4-212(G)(2), R18-4-212(I)(3), R18-4-213(A), R18-4-214(F), R18-4-214.01(H), R18-4-214.01(L), R18-4-214.02(G), R18-4-214.02(K), R18-4-216(E), R18-4-216(G)(1), R18-4-216(G)(2), R18-4-216(H)(3), R18-4-217(D), R18-4-217(E), R18-4-217(F), R18-4-310(D), R18-4-310(D)(2), R18-4-313(J), R18-4-313(K), R18-4-313(M)(1), R18-4-313(M)(2), R18-4-403(A)(1), R18-4-403(A)(2). Department application form required.
2. Monitoring sample change approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-214(E), R18-4-214.02(F), R18-4-310(E), R18-4-313(J), R18-4-313(M)(1), R18-4-313(M)(2), R18-4-313(M)(3).	15	27	No	A.A.C. R18-4-214(E), R18-4-214.02(F), R18-4-310(E), R18-4-313(J), R18-4-313(M)(1), R18-4-313(M)(2), R18-4-313(M)(3). Department application form required.
3. Residual disinfectant concentration sampling interval approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-303(B)(2)(a).	15	15	No	A.A.C. R18-4-303, Department application form required.
4. Interim monitoring relief determination, A.R.S. § 49-359(B)(3).	21	41	No	A.R.S. § 49-359(B), Department application form required.
5. Man-made radioactivity environmental surveillance substitution approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-217(I)(3)(d).	21	62	No	A.A.C. R18-4-217(I)(3)(d), Department application form required.
6. Consecutive public water system monitoring requirements modification approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-113.	21	84	No	A.A.C. R18-4-113, Department application form and site inspection required.
7. Trihalomethane source basis for sampling purposes approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-214(C).	21	167	No	A.A.C. R18-4-214, Department application form and site inspection required.
8. Sodium multiple well sampling number reduction approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-401(B).	21	167	No	A.A.C. R18-4-401, Department application form and site inspection required.
9. Turbidity monitoring frequency reduction approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-302(H).	21	167	No	A.A.C. R18-4-302, Department application form and site inspection required.

## TITLE 18. ENVIRONMENTAL QUALITY

## CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 8. Safe Drinking Water Monitoring and Treatment Licenses****Safe Drinking Water Monitoring and Treatment Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
10. Monitoring waiver approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-206(L), R18-4-207(K), R18-4-212(K)(1), R18-4-212(K)(2), R18-4-212(K)(3), R18-4-212(K)(4), R18-4-216(M)(1), R18-4-216(M)(2), R18-4-217(F).	21	105	No	A.A.C. R18-4-206(L), R18-4-207(K), R18-4-212(K)(1), R18-4-212(K)(2), R18-4-212(K)(3), R18-4-212(K)(4), R18-4-216(M)(1), R18-4-216(M)(2), R18-4-217(F), Department application form required.
<b>Group II: Safe drinking water variance and exemption licenses:</b>				
11. Maximum contaminant level or treatment technique requirement variance with no public hearing, A.R.S. § 49-353(A)(2), A.A.C. R18-4-110.	21	105	No	A.A.C. R18-4-110, Department application form and site inspection required.
12. Maximum contaminant level or treatment technique requirement variance with a public hearing, A.R.S. § 49-353(A)(2), A.A.C. R18-4-110.	21	187	No	A.A.C. R18-4-110, Department application form and site inspection required.
13. Maximum contaminant level or treatment technique requirement exemption with no public hearing, A.R.S. § 49-353(A)(2), A.A.C. R18-4-111.	21	105	No	A.A.C. R18-4-111, Department application form and site inspection required.
14. Maximum contaminant level or treatment technique requirement exemption with a public hearing, A.R.S. § 49-353(A)(2), A.A.C. R18-4-111.	21	187	No	A.A.C. R18-4-111, Department application form and site inspection required.
15. Maximum contaminant level or treatment technique requirement compliance extension approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-111(C).	21	32	No	A.A.C. R18-4-111, Department application form and site inspection required.
16. Maximum contaminant level or treatment technique requirement compliance additional extension approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-111(C).	21	42	No	A.A.C. R18-4-111, Department application form and site inspection required.
17. Safe drinking water requirement exclusion approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-112(A).	21	42	No	A.A.C. R18-4-112(B), Department application form and site inspection required.
18. Backflow-prevention assembly third-party certifying entity designation approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-115(D)(2).	21	105	No	A.A.C. R18-4-115, Department application form and site inspection required.
<b>Group III: Safe drinking water treatment and monitoring plan licenses:</b>				
19. Maximum contaminant level compliance blending plan approval (for 10 or fewer points-of entry), A.R.S. § 49-353(A)(2), R18-4-221(A).	21	42	No	A.A.C. R18-4-221, Department application form and site inspection required.
20. Maximum contaminant level compliance blending plan approval (for more than 10 points-of-entry), A.R.S. § 49-353(A)(2), R18-4-221(A).	21	84	No	A.A.C. R18-4-221, Department application form and site inspection required.

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**Table 8. Safe Drinking Water Monitoring and Treatment Licenses****Safe Drinking Water Monitoring and Treatment Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
21. Maximum contaminant level compliance blending plan change approval (for 10 or fewer points-of entry), A.R.S. § 49-353(A)(2), R18-4-221(B).	21	42	No	A.A.C. R18-4-221, Department application form and site inspection required.
22. Maximum contaminant level compliance blending plan change approval (for more than 10 points-of-entry), A.R.S. § 49-353(A)(2), R18-4-221(B).	21	84	No	A.A.C. R18-4-221, Department application form and site inspection required.
<b>Group III: (Continued) Safe drinking water treatment and monitoring plan licenses:</b>				
23. Maximum contaminant level compliance at subsequent downstream service connections monitoring plan approval, A.R.S. § 49-353(A)(2), R18-4-221(A)(2).	21	125	No	A.A.C. R18-4-221, Department application form and site inspection required.
24. Point-of-entry treatment device monitoring plan approval, A.R.S. § 49-353(A)(2), R18-4-222(B)(1).	15	15	No	A.A.C. R18-4-222, Department application form and site inspection required.
25. Point-of-entry treatment device design approval, A.R.S. § 49-353(A)(2), R18-4-222(B)(2).	21	167	No	A.A.C. R18-4-222, Department application form and site inspection required.
26. Lead and copper source water treatment determination modification, A.R.S. § 49-353(A)(2), A.A.C. R18-4-313(P), R18-4-313(Q).	21	167	No	A.A.C. R18-4-313, Department application form and site inspection required.
27. Lead and copper source water concentration determination modification, A.R.S. § 49-353(A)(2), A.A.C. R18-4-314(N).	21	167	No	A.A.C. R18-4-314, Department application form and site inspection required.
28. Lead service line extent under system control determination approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-315(D).	21	105	No	A.A.C. R18-4-315, Department application form and site inspection required.
29. Lead service line extent under system control rebuttable presumption determination approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-315(E).	21	105	No	A.A.C. R18-4-315, Department application form and site inspection required.
<b>Group IV: Lead and copper corrosion control licenses:</b>				
30. Lead and copper optimal corrosion control treatment approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-313(A).	42	502	No	A.A.C. R18-4-313, Department application form and site inspection required.
31. Large water system lead and copper corrosion control activities equivalency demonstration approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-307(B).	42	502	No	A.A.C. R18-4-307, Department application form and site inspection required.

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CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 8. Safe Drinking Water Monitoring and Treatment Licenses**

**Safe Drinking Water Monitoring and Treatment Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
SRTF means Substantive Review Time-frame.  
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
32. Small and medium water system lead and copper corrosion control activities equivalency demonstration approval, A.R.S. § 49-353(A)(2), A.A.C. R18-4-307(B).	21	502	No	A.A.C. R18-4-307, Department application form and site inspection required.
33. Lead and copper optimal corrosion treatment determination modification, A.R.S. § 49-353(A)(2), A.A.C. R18-4-313(P), R18-4-313(Q).	42	376	No	A.A.C. R18-4-313, Department application form and site inspection required.
34. Lead and copper water quality control parameters determination modification, A.R.S. § 49-353(A)(2), A.A.C. R18-4-313(P), R18-4-313(Q).	42	376	No	A.A.C. R18-4-313, Department application form and site inspection required.

**Historical Note**

Table 8 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 9. Repealed**

**Historical Note**

Table 9 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table 9 repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 10. Water Permit Licensing Time-Frames (Business Days)**

Permits	Authority	Administrative Completeness Review	Substantive Review	Overall Time-Frame
<b>AQUIFER PROTECTION PERMITS</b>				
<b>Individual Permit</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	186 231 <sup>1</sup>	221 266
<b>Complex Individual Permit</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	249 294 <sup>1</sup>	284 329
<b>Individual Permit Significant Amendment</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	186 231 <sup>1</sup>	221 266
<b>Complex Individual Permit Significant Amendment</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35 35	249 294 <sup>1</sup>	284 329
<b>Individual Permit Other Amendment</b>	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35	100	135
<b>Temporary Individual Permit</b>	A.R.S. §§ 49-203, 49-242 18 A.A.C. 9, Article 2	35	145	180
<b>Type 3 General Permit</b>	A.R.S. § 49-245 A.A.C. R18-9-D301 through R18-9-D307	21	60	81

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<b>4.01 General Permit</b> 300 services or less More than 300 services	A.R.S. § 49-245 A.A.C. R18-9-E301	42 42	53 94	95 <sup>2</sup> 136 <sup>2</sup>
<b>Standard Single</b> 4.02, 4.03, 4.13, 4.14, 5.15, and 4.16 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302, R18-9-E303, R18-9-E313, R18-9-E314	42	31	73 <sup>2</sup>
<b>4.23 General Permit</b>	A.R.S. § 49-245 A.A.C. R18-9-E323	42	94	136 <sup>2</sup>
<b>Standard Combined</b> Two or three Type 4 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323	42	53	95 <sup>2</sup>
<b>Complex Combined</b> Four or more Type 4 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323	42	94	136 <sup>2</sup>
<b>SUBDIVISION APPROVALS</b>				
<b>Subdivision</b> Individual facilities	A.R.S. § 49-104(B)(11) A.A.C. R18-5-408	21	46	67
<b>Subdivision</b> Community facilities	A.R.S. § 49-104(B)(11) A.A.C. R18-5-403	21	37	58
<b>RECLAIMED WATER PERMITS</b>				
<b>Individual Permit</b> No public hearing Public hearing	A.R.S. § 49-203 A.A.C. R18-9-702 through R18-9-707	35 35	186 231 <sup>1</sup>	221 266
<b>Complex Individual Permit</b> No public hearing Public hearing	A.R.S. § 49-203 A.A.C. R18-9-702 through R18-9-707	35 35	249 294 <sup>1</sup>	284 329
<b>Type 3 General Permit</b>	A.R.S. § 49-203 A.A.C. R18-9-717, R18-9-718, R18-9-719	21	60	81
<b>ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM (AZPDES) PERMITS</b>				
<b>Individual Permit</b> <b>Major Facility</b> <sup>5</sup> No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	249 294 <sup>1</sup>	284 <sup>3, 4</sup> 329 <sup>3, 4</sup>
<b>Individual Permit</b> <b>Minor Facility</b> <sup>6</sup> No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	186 231 <sup>1</sup>	221 <sup>3, 4</sup> 266 <sup>3, 4</sup>
<b>Individual Permit</b> <b>Stormwater / Construction Activities</b> No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	126 171 <sup>1</sup>	161 206 <sup>3, 4</sup>
<b>Individual Permit</b> <b>Major Modification</b> No public hearing Public hearing	A.R.S. § 49-255.01 18 A.A.C. 9, Article 9, Part B	35 35	186 231 <sup>1</sup>	221 <sup>3, 4</sup> 266 <sup>3, 4</sup>
<b>LAND APPLICATION OF BIOSOLIDS REGISTRATIONS</b>				
<b>Biosolids Applicator</b> <b>Registration Request Acknowledgment</b>	A.R.S. § 49-255.03 A.A.C. R18-9-1004	15	0	15
<b>UNDERGROUND INJECTION CONTROL PERMITS</b>				
<b>Area Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C624	35 35	249 294 <sup>1</sup>	284 329
<b>Class I Well Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part E	35 35	249 294 <sup>1</sup>	284 329
<b>Class II Well Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01 A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part F	35 35	186 231 <sup>1</sup>	221 266

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<b>Class III Well Permit and Modification</b>	A.R.S. §§ 49-203, 49-257.01	35	186	221
No public hearing	A.A.C. R18-9-C616	35	231 <sup>1</sup>	266
Public hearing	18 A.A.C. 9, Article 6, Part G			
<b>Class V Well Individual Permit and Modification</b>	A.R.S. §§ 49-203, 49-257.01	35	186	221
No public hearing	A.A.C. R18-9-C616	35	231 <sup>1</sup>	266
Public hearing	18 A.A.C. 9, Article 6, Part I			
<b>Class VI Well Permit and Modification</b>	A.R.S. §§ 49-203, 49-257.01	35	249	284
No public hearing	A.A.C. R18-9-C616	35	294 <sup>1</sup>	329
Public hearing	18 A.A.C. 9, Article 6, Part J			

<sup>1</sup> A request for a public hearing allows the Department 60 days to publish the notice of public hearing and for the official comment period. Forty-five business days are added to the substantive review time-frame.

<sup>2</sup> Each request for an alternative design, installation, or operational feature under R18-9-A312(G) to a Type 4 General Permit adds eight business days to the substantive review time-frame.

<sup>3</sup> EPA reserves the right, under 40 CFR 123.44, to take 90 days to supply specific grounds for objection to a draft or proposed permit when a general objection is filed within the review period. The first 30 days run concurrently with the Department’s official comment period. Forty-five business days will be added to the substantive review time-frame to allow for the EPA review.

<sup>4</sup> If a request for a variance is submitted to the Department, 40 CFR 124.62 requires that specific variances are subject to review by EPA. Under 40 CFR 123.44, EPA reserves the right to take 90-days to approve or deny the variance. Sixty-four business days will be added to the substantive review time-frame to allow for the EPA review.

<sup>5</sup> “Major facility” means any NPDES “facility or activity” classified as such by the EPA in conjunction with the Director.

<sup>6</sup> “Minor facility” means any facility that is not classified as a major facility.

**Historical Note**

Table 10 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table 10 repealed; new Table 10 made by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1). Table 10 amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2). Table 10 amended by final rulemaking at 28 A.A.R. 1801 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

**Table 11. Surface Water Licenses**

**Surface Water Licenses**

**Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Clean Water Act (CWA) § 401 certification licenses:</b>				
1. CWA § 401 state certification of a proposed CWA § 404 permit, A.R.S. § 49-202.	21	42	No	A.R.S. § 49-202, 33 U.S.C. § 1341(a), Public notice of underlying proposed permit and Department application form required.

**Historical Note**

Table 11 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

## TITLE 18. ENVIRONMENTAL QUALITY

## CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

Table 12. Solid Waste Licenses

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Solid Waste Licenses</b>				
<b>Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements</b>				
ACRTF means Administrative Completeness Review Time-frame.				
SRTF means Substantive Review Time-frame.				
Day means business day.				
<b>Group I: Solid waste variance licenses:</b>				
1. Rule or standard variance request, A.R.S. § 49-763.01.	21	41	No	A.R.S. § 49-763.01, Department application form required.
<b>Group II: Nonlandfill solid waste facility individual discharging aquifer protection (AP) licenses:</b>				
2. Standard nonlandfill solid waste discharging facility AP new permit with no public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	186	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
3. Standard nonlandfill solid waste discharging facility AP new permit with a public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	232	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
4. Complex nonlandfill solid waste discharging facility AP new permit with no public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	249	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
5. Complex nonlandfill solid waste discharging facility AP new permit with a public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	295	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
6. Standard nonlandfill solid waste discharging facility AP permit significant amendment with no public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	186	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
7. Standard nonlandfill solid waste discharging facility AP permit significant amendment with a public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	232	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
8. Complex nonlandfill solid waste discharging facility AP permit significant amendment with no public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	249	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
9. Complex nonlandfill solid waste discharging facility AP permit significant amendment with a public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	295	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
10. Standard nonlandfill solid waste discharging facility AP permit other amendment, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	186	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form and initial fee required.
11. Complex nonlandfill solid waste discharging facility AP permit other amendment, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	249	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 12. Solid Waste Licenses**

**Solid Waste Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTRF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTRF Days	SRTF Days	Subject to Sanctions	Application Components
12. Nonlandfill solid waste discharging facility AP permit transfer approval, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	21	32	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form and initial fee required.
13. Nonlandfill solid waste discharging facility AP closure plan approval, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	21	41	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
14. Standard nonlandfill solid waste discharging facility AP post-closure plan approval, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	21	41	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
15. Complex nonlandfill solid waste discharging facility AP post-closure plan approval, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	21	125	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.

**Historical Note**

Table 12 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 9 A.A.R. 241, effective March 11, 2003 (Supp. 03-1).

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

Table 13. Special Waste Licenses

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Special Waste Licenses</b>				
<b>Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements</b>				
ACRTF means Administrative Completeness Review Time-frame.				
SRTF means Substantive Review Time-frame.				
Day means business day.				
<b>Group I: Special waste licenses:</b>				
1. Waste from shredding motor vehicles alternative sampling plan approval, A.R.S. §§ 49-762 and 49-857, A.A.C. R18-13-1307(A).	5	5	No	A.A.C. R18-13-1307(A).
2. Petroleum contaminated soil temporary treatment facility approval, A.A.C. R18-13-1610(B).	32	62	No	A.A.C. R18-13-1610(B).
<b>Group II: Special waste facility plan licenses:</b>				
3. Existing special waste facility plan approval, A.R.S. § 49-762.03(A)(2).	32	124	Yes	A.A.C. R18-13-1601 through R18-13-1614, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.
4. New special waste facility plan approval with no public hearing, A.R.S. §§ 49-762.03(A)(1), 49-857, and 49-857.01.	32	62	Yes	A.A.C. R18-13-1601 through R18-13-1614, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.
5. New special waste facility plan approval with a public hearing, A.R.S. §§ 49-762.03(A)(1), 49-857, and 49-857.01.	32	124	Yes	A.A.C. R18-13-1601 through R18-13-1614, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.
<b>Group III: Special waste facility amendment licenses:</b>				
6. Special waste facility plan type III substantial change, A.R.S. §§ 49-762.06(B), 49-857, and 49-857.01.	21	41	Yes	A.A.C. R18-13-1601 through R18-13-1614, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.
7. Special waste facility plan type IV substantial change with no public hearing, A.R.S. § 49-762.06(B).	21	41	Yes	A.A.C. R18-13-1601 through R18-13-1614, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.
8. Special waste facility plan type IV substantial change with a public hearing, A.R.S. §§ 49-762.06(B), 49-857, and 49-857.01.	21	62	Yes	A.A.C. R18-13-1601 through R18-13-1614, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.

**Historical Note**

Table 13 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

Table 14. Landfill Licenses

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Landfill Licenses</b>				
<b>Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements</b>				
ACRTF means Administrative Completeness Review Time-frame.				
SRTF means Substantive Review Time-frame.				
Day means business day.				
<b>Group I: Municipal solid waste landfill facility plan licenses:</b>				
1. Existing solid waste facility plan approval (landfill), A.R.S. §§ 49-761(B), 49-762, 49-762.03, and 49-762.04.	32	124	Yes	40 CFR § 257, 40 CFR § 258, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.
2. New solid waste facility plan approval with no public hearing (landfill), A.R.S. §§ 49-761(B), 49-762, 49-762.03, and 49-762.04.	32	62	Yes	40 CFR § 257, 40 CFR § 258, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.
3. New solid waste facility plan approval with a public hearing (municipal solid waste landfill), A.R.S. §§ 49-761(B), 49-762, 49-762.03, and 49-762.04.	32	124	Yes	40 CFR § 257, 40 CFR § 258, Fee: R18-13-701 through R18-13-703, Department application form, site inspection, and initial fee required.
4. New municipal solid waste landfill operation temporary authorization, A.R.S. § 49-762.03(C).	21	41	No	A.R.S. § 49-762.03(C).
<b>Group II: Solid waste landfill facility amendment licenses:</b>				
5. Solid waste facility plan type III substantial change (municipal solid waste landfill) with no public hearing, A.R.S. § 49-762.06(B).	21	41	Yes	40 CFR § 258, Fee: R18-13-701 through R18-13-703, Department application, site inspection, form required.
6. Solid waste facility plan type III substantial change (municipal solid waste landfill) with a public hearing, A.R.S. § 49-762.06(B).	21	62	Yes	40 CFR § 258, Fee: R18-13-701 through R18-13-703, Department application, site inspection, form required.
7. Solid waste facility plan type IV substantial change (municipal solid wasteland fill) with no public hearing, A.R.S. § 49-762.06(B).	21	41	Yes	40 CFR § 258, Fee: R18-13-701 through R18-13-703, Department application, site inspection, form required.
8. Solid waste facility plan type IV substantial change (municipal solid waste landfill) with a public hearing, A.R.S. § 49-762.06(B).	21	62	Yes	40 CFR § 258, Fee: R18-13-701 through R18-13-703, Department application, site inspection, form required.
<b>Group III: Non-municipal solid waste landfill facility individual discharging aquifer protection (AP) licenses:</b>				
9. Standard non-municipal solid waste landfill discharging facility AP new permit with no public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	186	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
10. Standard non-municipal solid waste landfill discharging facility AP new permit with a public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	232	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.

## TITLE 18. ENVIRONMENTAL QUALITY

## CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

Table 14. Landfill Licenses (Continued)

**Landfill Licenses**  
**Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group III (Continued): Non-municipal solid waste landfill facility individual discharging aquifer protection (AP) licenses:</b>				
11. Complex non-municipal solid waste landfill discharging facility AP new permit with no public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	249	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
12. Complex non-municipal solid waste landfill discharging facility AP new permit with a public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	295	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
13. Standard non-municipal solid waste landfill discharging facility AP permit significant amendment with no public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	186	Yes	A.A.C. A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
14. Standard non-municipal solid waste landfill discharging facility AP permit significant amendment with a public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	232	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
15. Complex non-municipal solid waste landfill discharging facility AP permit significant amendment with no public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	249	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
16. Complex non-municipal solid waste landfill discharging facility AP permit significant amendment with a public hearing, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	295	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
17. Standard non-municipal solid waste landfill discharging facility AP permit other amendment, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	186	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
18. Complex non-municipal solid waste landfill discharging facility AP permit other amendment, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	35	249	Yes	A.A.C. R18-9-A201 through R18-9-A213, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.
19. Non-municipal solid waste landfill discharging facility AP permit transfer approval, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	21	32	Yes	A.A.C. R18-9-121(E), Fee: R18-14-101 through R18-14-107, Department application form and initial fee required.
20. Non-municipal solid waste landfill discharging facility AP closure plan approval, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	21	41	Yes	A.A.C. R18-9-116, Fee: R18-14-101 through R18-14-107, Department application form, site inspection, and initial fee required.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 14. Landfill Licenses (Continued)**

**Landfill Licenses**

**Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
 SRTF means Substantive Review Time-frame.  
 Day means business day

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group III (Continued): Non-municipal solid waste landfill facility individual discharging aquifer protection (AP) licenses:</b>				
21. Standard non-municipal solid waste landfill discharging facility AP post-closure plan approval, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	21	41	Yes	A.A.C. R18-9-116, Fee: R18-14-101 through R18-14-107, Department application form required.
22. Complex non-municipal solid waste landfill discharging facility AP post-closure plan approval, A.R.S. §§ 49-241 through 49-251, A.A.C. R18-9-101 through R18-9-A213.	21	125	Yes	A.A.C. R18-9-116, Fee: R18-14-101 through R18-14-107, Department application form required.

**Historical Note**

Table 14 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 15. Biohazardous Medical Waste Licenses**

**Biohazardous Medical Waste Licenses**

**Subject to A.R.S. § 41-1073(A) Licensing Time-Frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
 SRTF means Substantive Review Time-frame.  
 Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
1. Biohazardous medical waste plan approval of storage, treatment, or disposal facility with no public hearing. A.R.S. § 49-762.04, A.A.C. R18-13-1410(A)	32	62	Yes	A.A.C. R18-13-1410, R18-13-1411, and R18-13-1412, Fee: R18-13-701 through R18-13-703. Initial fee required.
2. Biohazardous medical waste plan approval of storage, treatment, or disposal facility with a public hearing. A.R.S. § 49-762.04, A.A.C. R18-13-1410(A)	32	124	Yes	A.A.C. R18-13-1410, R18-13-1411, and R18-13-1412, Fee: R18-13-701 through R18-13-703. Initial fee required.
3. Biohazardous medical waste transporter registration. A.R.S. § 49-761, A.A.C. R18-13-1409	32	0	No	A.A.C. R18-13-1409, Department application form required.
4. Biohazardous medical waste facility plan amendment type III substantial change. A.R.S. § 49-762.06, A.A.C. R18-13-1413	21	41	Yes	A.A.C. R18-13-1413, Fee: R18-13-701 through R18-13-703. Initial fee required.
5. Biohazardous medical waste facility plan amendment type IV substantial change with no public hearing. A.R.S. § 49-762.06, A.A.C. R18-13-1413	21	41	Yes	A.A.C. R18-13-1413, Fee: R18-13-701 through R18-13-703. Initial fee required.
6. Biohazardous medical waste facility plan amendment type IV substantial change with a public hearing. A.R.S. § 49-762.06, A.A.C. R18-13-1413	21	62	Yes	A.A.C. R18-13-1413, Fee: R18-13-701 through R18-13-703. Initial fee required.
7. Biohazardous medical waste plan alternative treatment registration and approval. A.R.S. § 49-761, A.A.C. R18-13-1414	32	62	No	A.A.C. R18-13-1414, Department application form required.

**Historical Note**

Table 15 made by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

## TITLE 18. ENVIRONMENTAL QUALITY

## CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 16. Waste Tire, Lead Acid Battery, and Used Oil Licenses**

**Waste Tire, Lead Acid Battery, and Used Oil Licenses**  
**Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Waste tire licenses:</b>				
1. Waste tire collection site registration, A.R.S. § 44-1303.	11	21	No	A.R.S. § 44-1303, Department application form required.
2. Mining off-road waste tire collection facility license, A.R.S. § 44-1304, A.A.C. R18-13-1206.	32	62	No	A.R.S. § 44-1304.
<b>Group II: Lead acid battery licenses:</b>				
3. Lead battery collection or recycling facility authorization, A.R.S. § 44-1322(C).	32	62	No	A.R.S. § 44-1322(C), Department application form required.
<b>Group III: Used oil licenses:</b>				
4. Used oil collection center registration number, A.R.S. § 49-802(C)(1).	11	21	No	A.R.S. § 49-802(C)(1).

**Historical Note**

Table 16 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 17. Hazardous Waste Licenses**

**Hazardous Waste Licenses**  
**Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Resource Conservation and Recovery Act (RCRA) new and renewal licenses:</b>				
1. Hazardous waste container or tank permit with no public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	251	Yes	40 CFR §§ 270.10-270.16, and 270.27, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
2. Hazardous waste container or tank permit with a public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	293	Yes	40 CFR §§ 270.10-270.16, and 270.27, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
3. Hazardous waste surface impoundment permit with no public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	376	Yes	40 CFR §§ 270.10-270.14, 270.17, and 270.27, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
4. Hazardous waste surface impoundment permit with a public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	418	Yes	40 CFR §§ 270.10-270.14, 270.17, and 270.27, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
5. Hazardous waste pile permit with no public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	376	Yes	40 CFR §§ 270.10-270.14, and 270.18, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.

## TITLE 18. ENVIRONMENTAL QUALITY

## CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

Table 17. Hazardous Waste Licenses

<b>Hazardous Waste Licenses</b>				
<b>Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements</b>				
<b>License Category</b>	<b>ACRTF Days</b>	<b>SRTF Days</b>	<b>Subject to Sanctions</b>	<b>Application Components</b>
6. Hazardous waste pile permit with a public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	418	Yes	40 CFR §§ 270.10-270.14, and 270.18, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
7. Hazardous waste incinerator or burning boiler and industrial furnace (BIF) permit with no public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	502	Yes	40 CFR §§ 270.10-270.14, 270.19, 270.22, 270.62, and 270.66, Fee: A.A.C. R18-8-270(G), EPA 8700-23, Department application form, site inspection, and initial fee required.
8. Hazardous waste incinerator or burning boiler and industrial furnace (BIF) permit with a public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	544	Yes	40 CFR §§ 270.10-270.14, 270.19, 270.22, 270.62, and 270.66, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
9. Hazardous waste land treatment permit with no public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	376	Yes	40 CFR §§ 270.10-270.14, and 270.20, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
10. Hazardous waste land treatment permit with a public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	418	Yes	40 CFR §§ 270.10-270.14, and 270.20, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
11. Hazardous waste landfill facility permit with no public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	502	Yes	40 CFR §§ 270.10-270.14, and 270.21, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
12. Hazardous waste landfill facility permit with a public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	544	Yes	40 CFR §§ 270.10-270.14, and 270.21, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
13. Hazardous waste miscellaneous unit permit with no public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	376	Yes	40 CFR §§ 270.10-270.14, and 270.23, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
14. Hazardous waste miscellaneous unit permit with a public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	418	Yes	40 CFR §§ 270.10-270.14, and 270.23, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
15. Hazardous waste drip pad permit with no public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	376	Yes	40 CFR §§ 270.10-270.14, 270.26, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
16. Hazardous waste drip pad permit with a public hearing, A.R.S. § 49-922, A.A.C. R18-8-270.	84	418	Yes	40 CFR §§ 270.10-270.14, 270.26, EPA 8700-23, Department application form, site inspection, and initial fee required.
17. Hazardous waste emergency permit, A.R.S. § 49-922, A.A.C. R18-8-270.	10	84	Yes	40 CFR § 270.61, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form and site inspection required.

## TITLE 18. ENVIRONMENTAL QUALITY

## CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

Table 17. Hazardous Waste Licenses

<b>Hazardous Waste Licenses</b>				
<b>Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements</b>				
<b>License Category</b>	<b>ACRTF Days</b>	<b>SRTF Days</b>	<b>Subject to Sanctions</b>	<b>Application Components</b>
18. Hazardous waste land treatment demonstration using field test or laboratory analysis permit, A.R.S. § 49-922, A.A.C. R18-8-270.	84	376	Yes	40 CFR § 270.63, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
19. Hazardous waste research, development, and demonstration permit, A.R.S. § 49-922, A.A.C. R18-8-270(Q).	84	376	Yes	40 CFR § 270.65, EPA 8700-23, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
<b>Group I (Continued): Resource Conservation and Recovery Act (RCRA) new and renewal licenses:</b>				
20. Hazardous waste temporary authorization request approval, A.R.S. § 49-922, A.A.C. R18-8-270.	84	84	No	40 CFR § 270.42(e), EPA 8700-23, Department application form and site inspection required.
<b>Group II: Resource Conservation and Recovery Act (RCRA) modification licenses:</b>				
21. Hazardous waste permit transfer approval, A.R.S. § 49-922, A.A.C. R18-8-270.	84	125	Yes	40 CFR § 270.40, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
22. Hazardous waste Class 1 permit modification, A.R.S. § 49-922, A.A.C. R18-8-270.	84	125	Yes	40 CFR § 270.42(a), Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
23. Hazardous waste Class 2 permit modification, A.R.S. § 49-922, A.A.C. R18-8-270.	84	376	Yes	40 CFR § 270.42(b), Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
24. Hazardous waste Class 3 incinerator, BIF, or landfill permit modification, A.R.S. § 49-922, A.A.C. R18-8-270.	84	502	Yes	40 CFR § 270.42(c), Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
25. Hazardous waste Class 3 other permit modification, A.R.S. § 49-922, A.A.C. R18-8-270.	84	376	Yes	40 CFR § 270.42(c), Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
26. Hazardous waste permit modification classification request, A.R.S. § 49-922, A.A.C. R18-8-270.	84	125	Yes	40 CFR § 270.42(d), Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.
<b>Group III: Hazardous waste closure plan licenses:</b>				
27. Hazardous waste interim status facility partial closure plan approval, A.R.S. § 49-922.	84	95	Yes	40 CFR §§ 264 Subpart G and 265 Subpart G, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required
28. Hazardous waste interim status facility final closure plan approval, A.R.S. § 49-922.	84	95	Yes	40 CFR §§ 264 Subpart G and 265 Subpart G, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required

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CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY - ADMINISTRATION

**Table 17. Hazardous Waste Licenses**

**Hazardous Waste Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
29. Hazardous waste post-closure permit with no public hearing, A.R.S. § 49-922.	84	376	Yes	40 CFR § 270.1(c), 40 CFR § 270.28 Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required
30. Hazardous waste post-closure permit with a public hearing, A.R.S. § 49-922.	84	418	Yes	40 CFR § 270.1(c), 40 CFR § 270.28 Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required
31. Hazardous waste remedial action plan approval, A.R.S. § 49-922.	84	251	Yes	40 CFR § 270.68, 40 CFR § 270, Subpart H, Fee: A.A.C. R18-8-270(G), Department application form, site inspection, and initial fee required.

**Historical Note**

Table 17 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 18. Underground Storage Tank Licenses**

**Underground Storage Tank Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Underground Storage Tank (UST) technical requirement license.</b>				
1. UST temporary closure extension request approval, A.R.S. § 49-1008, A.A.C. R18-12-270.	42	84	No	A.A.C. R18-12-270(F)-(G), Department application form required.
<b>Group II: Underground Storage Tank (UST) service provider licenses.</b>				
2. UST installation and retrofit service provider certification, A.R.S. § 49-1082, A.A.C. R18-12-803(1).	11	11	No	A.A.C. R18-12-806, Department application form required.
3. UST tightness testing service provider certification, A.R.S. § 49-1082, A.A.C. R18-12-803(2).	11	11	No	A.A.C. R18-12-806, Department application form required.
4. UST cathodic protection testing service provider certification, A.R.S. § 49-1082, A.A.C. R18-12-803(3).	11	11	No	A.A.C. R18-12-806, Department application form required.
5. UST decommissioning service provider certification, A.R.S. § 49-1082, A.A.C. R18-12-803(4).	11	11	No	A.A.C. R18-12-806, Department application form required.
6. UST interior lining service provider certification, A.R.S. § 49-1082, A.A.C. R18-12-803(5).	11	11	No	A.A.C. R18-12-806, Department application form required.

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**Historical Note**

Table 18 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 19. Repealed**

**Historical Note**

Table 19 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 19-S. Repealed**

**Historical Note**

Table 19-S adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table repealed by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 20. Voluntary Program Remediation Licenses**

**Voluntary Program Remediation Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
SRTF means Substantive Review Time-frame.  
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
<b>Group I: Voluntary program greenfields remediation license:</b>				
1. Voluntary program greenfields notice-to-proceed (NTP) approval, A.R.S. § 49-154(C).	5	5	No	A.R.S. § 49-154(C), Department application form required.
<b>Group II: Voluntary program brownfields remediation license:</b>				
2. Voluntary program brownfields certification, Governor letter to EPA of August 29, 1997, concerning the “designation of the Arizona Department of Environmental Quality as A State Environmental Agency pursuant to Section 198(c)(1)(C)” of the federal Taxpayer Relief Act of 1997.	21	21	No	Section 198(c) of the Taxpayer Relief Act of 1997; 26 U.S.C. 198(c), Department application form required.

**Historical Note**

Table 20 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Table amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

**Table 21. Pollution Prevention Licenses**

**Pollution Prevention Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.  
SRTF means Substantive Review Time-frame.  
Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
1. State agency hazardous waste generation level pre-approval, A.R.S. § 49-972(C).	63	63	No	A.R.S. § 49-972(E).

**Historical Note**

Table 21 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

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**Table 22. Multi-Program Licenses**

**Multi-Program Licenses  
Subject to A.R.S. § 41-1073(A) Licensing Time-frame Requirements**

ACRTF means Administrative Completeness Review Time-frame.

SRTF means Substantive Review Time-frame.

Day means business day.

License Category	ACRTF Days	SRTF Days	Subject to Sanctions	Application Components
1. Airport construction & expansion certificate (air & water), A.R.S. § 49-104.	21	42	No	49 U.S.C. § 2208(7)(A).

**Historical Note**

Table 22 adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

## 41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Adversely affected party" means:
  - (a) An individual who both:
    - (i) Provides evidence of an actual injury or economic damage that the individual has suffered or will suffer as a direct result of the action and not due to being a competitor or a general taxpayer.
    - (ii) Timely submits comments on the license application that include, with sufficient specificity, the questions of law, if applicable, that are the basis for the appeal.
  - (b) A group or association that identifies, by name and physical address in the notice of appeal, a member of the group or association who would be an adversely affected party in the individual's own right.
4. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party, including the administrative completeness of an application other than an application submitted to the department of water resources pursuant to title 45, and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
5. "Director" means the director of the office of administrative hearings.
6. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
7. "Licensee":
  - (a) Means any individual or business entity that has been issued a license by a state agency to engage in any business or activity in this state and that is subject to a licensing decision.
  - (b) Includes any individual or business entity that has applied for such a license and that appeals a licensing decision pursuant to section 41-1092.08 or 41-1092.12.
8. "Office" means the office of administrative hearings.
9. "Self-supporting regulatory board" means any one of the following:
  - (a) The Arizona state board of accountancy.
  - (b) The barbering and cosmetology board.
  - (c) The board of behavioral health examiners.

- (d) The Arizona state boxing and mixed martial arts commission.
- (e) The state board of chiropractic examiners.
- (f) The state board of dental examiners.
- (g) The state board of funeral directors and embalmers.
- (h) The Arizona game and fish commission.
- (i) The board of homeopathic and integrated medicine examiners.
- (j) The Arizona medical board.
- (k) The naturopathic physicians medical board.
- (l) The Arizona state board of nursing.
- (m) The board of examiners of nursing care institution administrators and assisted living facility managers.
- (n) The board of occupational therapy examiners.
- (o) The state board of dispensing opticians.
- (p) The state board of optometry.
- (q) The Arizona board of osteopathic examiners in medicine and surgery.
- (r) The Arizona peace officer standards and training board.
- (s) The Arizona state board of pharmacy.
- (t) The board of physical therapy.
- (u) The state board of podiatry examiners.
- (v) The state board for private postsecondary education.
- (w) The state board of psychologist examiners.
- (x) The board of respiratory care examiners.
- (y) The state board of technical registration.
- (z) The Arizona state veterinary medical examining board.
- (aa) The acupuncture board of examiners.
- (bb) The Arizona regulatory board of physician assistants.
- (cc) The board of athletic training.
- (dd) The board of massage therapy.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.

2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.

3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.

4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.

5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.

6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.

7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation, except as provided in title 28, chapter 30, article 2.
9. The department of economic security except as provided in section 46-458.
10. The department of revenue regarding:
  - (a) Income tax or withholding tax.
  - (b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.
11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education, but only in connection with contested cases and appealable agency actions related to either:
  - (a) Applications for issuance or renewal of a certificate and discipline of certificate holders and noncertificated persons pursuant to sections 15-203, 15-505, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
  - (b) The Arizona empowerment scholarship account program pursuant to title 15, chapter 19.
14. The board of fingerprinting.
15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.
2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly

to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain at least the following:

1. A concise statement of the reasons for the appeal or request for a hearing.
2. Detailed and complete information regarding all questions of law, if applicable, that are the basis for the appeal.
3. All relevant supporting documentation.
4. How the party is an adversely affected party, if applicable.

C. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

D. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

E. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

#### 41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, the parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. The parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence. An agency-issued license that substantially complied with the applicable licensing requirements establishes a prima facie demonstration that the license meets all state and federal legal and technical requirements and the license would protect public health, welfare and the environment. An adversely affected party may rebut a prima facie demonstration by presenting clear and convincing evidence demonstrating that one or more provisions in the license violate a specifically applicable state or federal requirement. If an adversely affected party rebuts a prima facie demonstration, the applicant or licensee and the agency director may present additional evidence to support issuing the license.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. The administrative law judge may order subpoenas for the production of documents if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to

testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Conclusions of law shall specifically address the agency's authority to make the decision consistent with section 41-1030.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.

2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.

3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

4. At a hearing held pursuant to chapter 23 or 24 of this title, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

**41-1092.10. Compulsory testimony; privilege against self-incrimination**

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

#### 49-104. Powers and duties of the department and director

##### A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 6



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** December 6, 2022

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

**FROM:** Council Staff

**DATE:** November 8, 2022

**SUBJECT:** Department of Health Services  
Title 9, Chapter 6

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This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Chapter 6, Article 7 regarding Required Immunizations for Child Care or School Entry.

In the last 5YRR of these rules the Department proposed to amend its rules, and completed an expedited rulemaking in 2018.

### **Proposed Action**

The Department indicates the rules are overall clear, concise, understandable, effective, and consistent with other rules and statutes, and therefore not proposing any changes to the rules.

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

An economic, small business, and consumer impact statement (EIS) was provided in the 2002 rulemaking. The EIS estimated that the Department would incur between \$1,000 and \$10,000 in costs for promulgating and enforcing the rules, but that no other persons directly affected by the rulemaking would incur additional costs. The Department anticipated that schools and child care providers would benefit from the Department's ability to temporarily suspend or discontinue an immunization requirement, and that persons newly authorized to access immunization records, and the general public, would benefit from increased access to immunization records and from having rules that are more clear, concise, and understandable. The Department believes that the costs and benefits identified in the 2002 EIS are generally consistent with the actual costs and benefits of the rules.

The Department believes that the changes in the rules, as described above, have made the rules more effective and have enabled schools, child care providers, parents, and the general public on the immunization requirements to attend a school and/or child care. Having rules that are more easily understood, complied with, and enforced are estimated to have provided a significant benefit to the general public. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department continues to use the rules without increased cost or burden. The Department believes that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, despite the minor updates to be made to the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

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

Not applicable. There are no corresponding federal laws.

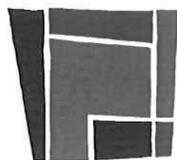
**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a general permit or license.

**11. Conclusion**

The Department finds the rules to be overall clear, concise, understandable, effective, and consistent with other rules and statutes. The Department is not proposing any changes to the rules.

Council staff recommend approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

September 21, 2022

**VIA: E-MAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Chairperson  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: ADHS, A.A.C. Title 9, Chapter 6, Article 7, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report from the Arizona Department of Health Services (Department) for A.A.C. Title 9, Chapter 6, Article 7 Required Immunizations for Child Care or School Entry which is due on September 30, 2022.

The Department reviewed the following rules in A.A.C. Title 9, Chapter 6, Article 7 with the intention that those rules do not expire under A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Emily Carey at 602-542-5121 or [emily.carey@azdh.gov](mailto:emily.carey@azdh.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephanie Elzenga', written over a horizontal line.

Stephanie Elzenga  
Director's Designee

RL: tk

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services – Communicable Diseases and Infestations

Article 7. Required Immunizations for Child Care or School Entry

September 2022

1. **Authorization of the rule by existing statutes:**

Authorizing statutes: A.R.S. §§ 36-136(A)(7) and 36-136(G)

Implementing statutes: A.R.S. §§ 15-872, 15-873, 15-874, 36-136(I)(1), 36-672, 36-674, and 36-883

2. **The objective of each rule:**

Rule	Objective
R9-6-701	To define terms used in the Article so the reader can consistently interpret the requirements.
R9-6-702	To specify immunizations required for child care or school entry.
R9-6-703	To specify the responsibilities of individuals and local health agencies for administering vaccines.
R9-6-704	To establish the standards for documentary proof of immunization or immunity to a disease listed in R9-6-702.
R9-6-705	To specify the responsibilities for a child care administrator or a school administrator related to immunizations.
R9-6-706	To establish exemptions from immunizations.
R9-6-707	To specify the requirements for reporting immunization information to the Department of a local health agency.
R9-6-708	To specify the persons to whom the Department may release immunization information.

3. **Are the rules effective in achieving their objectives?**

Yes  No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?**

Yes  No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

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5. **Are the rules enforced as written?** Yes  No

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.*

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes  No

*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

*If yes, please fill out the table below:*

Rule	Explanation

8. **Economic, small business, and consumer impact comparison (summary):**

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” A.R.S. § 36-672 requires the Department to adopt rules specifying immunization requirements for school attendance. A.R.S. § 15-872 requires the development by rule of standards for documentary proof of immunization or exemption from immunization. A.R.S. § 15-873 authorizes exemptions from school immunization requirements for personal beliefs or medical reasons, and A.R.S. § 36-883(C) authorizes exemptions from child care immunization requirements for religious beliefs. The Department has adopted the Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 7, rules to implement the related statutes. The rules in 9 A.A.C. 6, Article 7 establish requirements related to immunization requirements for child care attendance and school entry, including exemptions from the immunization requirements.

During the 2021-2022 school year, 5.7% of children in child care had a religious exemption, and 0.53% had a medical exemption. For children in kindergarten, 6.6% of the children had a personal exemption, and 0.47% had a medical exemption. For children in sixth grade, 7.4% of the children had a personal exemption, and 0.27% had a medical exemption.

The rules in 9 A.A.C. 6, Article 7 were last revised by expedited rulemaking published in the Arizona

Administrative Register (A.A.R.) at 24 A.A.R. 2682, effective September 4, 2018. The rulemaking removed obsolete and redundant requirements, simplified the rules, made the rules more consistent with standard medical practices, and allowed for improved electronic recordkeeping. This included allowing the federally required VIS document, describing a vaccine, the disease it protects against, description of risks and benefits, and contraindications, to be provided “in writing,” as defined in R9-6-701. The rules in R9-6-701 and R9-6-702 were amended to remove redundant definitions and requirements, and to make the rules more consistent with standard medical practices. Amendments in section R9-6-702 included adding two new tables to simplify the rules and make the immunization requirements more clear, concise and understandable. The rules in R9-6-703 were revised to clarify the responsibilities of the parent and individuals administering vaccinations to children. Rules in R9-6-704 and R9-6-705 were revised to provide administrators of schools and child care facilities more understandable procedures and policies on documentation of proof of immunization. In R9-6-706 and R9-6-707, the rules were amended to provide clarify on exemptions from immunizations, and the reporting requirements that school and child care administrators are required to submit documentation to the Department. Lastly, the rules in R9-7-708 were revised to include a statutory reference and a clarification of a Department program.

An economic, small business, and consumer impact statement (EIS) was provided in the 2002 rulemaking. The EIS report the comparison, annual cost/revenues as designated as “minimal” when less than \$1,000.00; “moderate” when between \$1,000.00 and \$10,000.00; “substantial” when \$10,000.00 or more; and “significant” when meaningful or important, but not readily subject to quantification. The EIS estimated that the Department would incur moderate costs for promulgating and enforcing the rules, but that no other persons directly affected by the rulemaking would incur additional costs. The Department anticipated that schools and child care providers would benefit from the Department’s ability to temporarily suspend or discontinue an immunization requirement, and that persons newly authorized to access immunization records, and the general public would benefit from increased access to immunization records and from having rules that are more clear, concise, and understandable. The Department believes that the costs and benefits identified in the 2002 EIS are generally consistent with the actual costs and benefits of the rules.

The Department believes that the changes in the rules, as described above, have made the rules more effective and have enabled schools, child care providers, parents, and the general public on the immunization requirements to attend a school and/or child care. Having rules that are more easily understood, complied with, and enforced are estimated to have provided a significant benefit to the general public. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No √

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

In the 2017 five-year review report, the Department proposed to conduct a rulemaking. The Department completed this course of action through an expedited rulemaking at 24 A.A.R. 2682, effective September 4, 2018.

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department continues to use the rules without increased cost or burden. The Department believes that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, despite the minor updates to be made to the rules.

**12. Are the rules more stringent than corresponding federal laws? Yes \_\_\_ No**

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

The rules are not related to any federal laws.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

**14. Proposed course of action:**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The Department believes the current rules in 9 A.A.C. 6, Article 7 are sufficient to protect the public's health and safety. Therefore, the Department does not plan to amend the rules unless a threat or substantive issue affecting public health and safety arises.

## ARTICLE 7. REQUIRED IMMUNIZATIONS FOR CHILD CARE OR SCHOOL ENTRY

### R9 6 701. Definitions

In addition to the definitions in A.R.S. § 36-671 and R9-6-101, the following definitions apply in this Article, unless otherwise specified:

1. "Child" means:
  - a. An individual 18 years of age or less, or
  - b. An individual more than 18 years of age attending school.
2. "Child care" means:
  - a. A child care facility as defined in A.R.S. § 36 881; or
  - b. A child care group home as defined in A.R.S. § 36 897.
3. "Child care administrator" means an individual, or the individual's designee, having daily control and supervision of a child care.
4. "Day" means a calendar day, and excludes the:
  - a. Day of the act or event from which a designated period of time begins to run, and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
5. "Document" means information in written, photographic, electronic, or other permanent form.
6. "Enroll" means to accept for attendance at a school or child care.
7. "Entry" means the first day of attendance at a child care or at a specific grade level in a school.
8. "Immunization registry" means an electronic database maintained by a governmental health agency for the storage of immunization data for vaccines.
9. "In writing" means on paper or in a printable electronic format.
10. "Medical exemption" means the written certification described in A.R.S. § 15-873(A)(2).
11. "Nurse" means a:
  - a. Registered nurse, as defined in A.R.S. § 32-1601; or
  - b. Practical nurse, as defined in A.R.S. § 32-1601.
12. "Parent" means:
  - a. A natural or adoptive mother or father,
  - b. A legal guardian appointed by a court of competent jurisdiction, or
  - c. A "custodian" as defined in A.R.S. § 8-201.
13. "Physician" has the same meaning as in A.R.S. § 15-871.
14. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.
15. "School-based or child care-based vaccination information system" means an electronic database used and maintained by a school, child care, or group of schools or child cares for the storage of immunization data for vaccines.
16. "Signature" means:
  - a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
  - b. An electronic signature as defined in A.R.S. § 44-7002.

### R9 6 702. Required Immunizations for Child Care or School Entry

Except as provided in R9-6-706, documentary proof of immunization, according to Table 7.1 or Table 7.2, for each of the following diseases is required for child care or school entry:

1. Diphtheria;
2. Tetanus;
3. Pertussis;
4. Hepatitis A, for a child 1 through 5 years of age in child care in Maricopa County;
5. Hepatitis B;
6. Poliomyelitis;
7. Measles (rubeola);
8. Mumps;
9. Rubella (German Measles);
10. *Haemophilus influenzae* type b, for a child two months through 59 months of age;
11. Varicella; and
12. Meningococcal disease.

**Table 7.1. Immunization Requirements for Child Care or School Entry**

Key:

DTaP	=	Diphtheria, tetanus, and acellular pertussis vaccine
DTP	=	Diphtheria, tetanus, and pertussis vaccine
Hep A	=	Hepatitis A vaccine
Hep B	=	Hepatitis B vaccine
Hib	=	<i>Haemophilus influenzae</i> type b vaccine
MMR	=	Measles, mumps, and rubella vaccine
MCV4	=	Quadrivalent meningococcal vaccine
Polio	=	Inactivated poliomyelitis vaccine (IPV) or trivalent oral poliomyelitis vaccine (tOPV)
Td	=	Tetanus and diphtheria vaccine
Tdap	=	Tetanus, diphtheria, and acellular pertussis vaccine
VAR	=	Varicella vaccine
Kindergarten	=	The grade level in a school that precedes first grade

**A. Vaccine Doses Required for Child Care Attendance**

Vaccine Against <input type="checkbox"/>	Age <input type="checkbox"/>	2 months	4 months	6 months	12 months	15 months	18 months	19-59 months
Diphtheria, Tetanus, Pertussis		DTaP 1	DTaP 2	DTaP 3	---	DTaP 4	---	Documented 4 DTaP
Hepatitis B		Hep B 1	Hep B 2	---	Hep B 3	---	---	Documented 3 Hep B
<i>Haemophilus influenzae</i> type b		Hib 1	Hib 2	Hib 3 <sup>1</sup>	---	Hib 3 or 4 <sup>1</sup>	---	Documented 3-4 Hib, as specified in Note 3
Poliomyelitis		Polio 1 <sup>2</sup>	Polio 2 <sup>2</sup>	---	Polio 3 <sup>2</sup>	---	---	Documented 3 Polio
Measles, Mumps, Rubella		---	---	---	MMR 1	---	---	Documented 1 MMR
Varicella		---	---	---	VAR 1	---	---	Documented 1 VAR
Hepatitis A (Maricopa County only)		---	---	---	Hep A 1	---	Hep A 2	Documented 2 Hep A

<sup>1</sup> The recommended schedule for a four-dose Hib vaccine is two, four, and six months of age with a booster dose at 12-15 months of age. The recommended schedule for a three-dose Hib vaccine is two and four months of age with a booster dose at 12-15 months of age.

<sup>2</sup> Bivalent and monovalent oral poliomyelitis vaccines do not meet these immunization requirements. An oral poliomyelitis vaccine received before April 2016 is assumed to be trivalent oral poliomyelitis vaccine, unless otherwise specified, and to satisfy immunization requirements.

**B. Vaccine Doses Required for School Attendance**

A child at any age within the range designated by the black bar is required to have documentation of the indicated number of doses of the specified vaccine.

Vaccine Against <input type="checkbox"/>	Age <input type="checkbox"/>	4 - 6 years and attendance in Kindergarten or 1st grade	7 - 10 years	11 years or older
Diphtheria, Tetanus, Pertussis		4 to 6 DTP/DTaP <sup>1</sup>	3 or 4 tetanus-diphtheria containing vaccines <sup>2</sup>	3 to 5 tetanus-diphtheria-containing vaccines, including 1 Tdap <sup>2,3</sup>

<b>Meningococcal invasive disease</b>	---	---	<b>1 MCV4</b>
<b>Hepatitis B</b>	<b>3 to 4 Hep B<sup>4</sup></b>		<b>2 to 4 Hep B<sup>4, 5</sup></b>
<b>Poliomyelitis</b>	<b>3 or 4 Polio<sup>6</sup></b>		
<b>Measles, Mumps, Rubella</b>	<b>2 MMR</b>		
<b>Varicella zoster</b>	<b>1-2 VAR<sup>7</sup></b>		

1 Only four doses of DTP/DTaP are required if the fourth dose of DTP/DTaP was received after the child's fourth birthday; otherwise an additional dose is required after the child's fourth birthday, up to a maximum of six doses.

2 Only three doses of tetanus-diphtheria-containing vaccine are required if the first dose of tetanus-diphtheria-containing vaccine was received on or after the child's first birthday; otherwise four are required.

3 One dose of Tdap is required if five years have passed since the date of the child's last dose of tetanus-diphtheria-containing vaccine and the child has not received Tdap. At least one dose of a tetanus-diphtheria-containing vaccine is required to have been administered within the previous 10 years.

4 Only three doses are required if the third dose was received at or after the child was 24 weeks of age; otherwise four are required.

5 Only two doses, at least four months apart, are required if the child received the adolescent series using the Merck Recombivax HB Adult Formulation vaccine when the child was 11-15 years of age.

6 Bivalent and monovalent oral poliomyelitis vaccines do not meet these immunization requirements. An oral poliomyelitis vaccine received before April 2016 is assumed to be trivalent oral poliomyelitis vaccine, unless otherwise specified, and to satisfy immunization requirements. Only three doses are required if the third dose was received after the child's fourth birthday and at least six months after the second dose; otherwise four doses are required, with the last received after the child's fourth birthday. Poliomyelitis vaccine is not required for individuals 18 years of age or older.

7 One dose is required if received by a child between 12 months and 12 years of age. A child who received a first dose of VAR at 13 years of age or older is required to receive a second dose if at least four weeks have passed since the date of the first dose.

**Table 7.2. Immunization Schedule for a Child Who Has Not Completed the Vaccine Series Required in Table 7.1 before Entry into a Child Care or School**

A. If a child does not meet the applicable requirements in Table 7.1, the child is required to have the first dose of vaccine for each of the diseases indicated in R9-6-702 before school entry or no later than 15 calendar days after child care entry.

B. If a child does not meet the applicable requirements in Table 7.1, the child is required to have the second and subsequent doses of vaccine for each of the diseases indicated in R9-6-702 either:

1. Before school entry or no later than 15 calendar days after child care entry, or
2. At the intervals specified below.

Vaccine Against <input type="checkbox"/>	Intervals between Doses				
	Dose <input type="checkbox"/>	2nd Dose	3rd Dose	4th Dose	5th Dose
<b>Diphtheria, Tetanus, Pertussis</b>					
Child < 7 years of age (DTP or a combination of DTP and DTaP)		No sooner than four weeks after the first dose	No sooner than four weeks after the second dose	No sooner than six months after the third dose	No sooner than six months after the fourth dose, if the fourth dose was received at < 4 years of age
Child 7 through 10 years of age (Tetanus-diphtheria containing vaccines)		No sooner than four weeks after the first dose	No sooner than six months after the second dose	No sooner than six months after the third dose, if the first dose was received at < 12 months of age	---
Child > 10 years of age (Tetanus-diphtheria containing vaccine, including one Tdap)		No sooner than four weeks after the first dose	No sooner than six months after the second dose	No sooner than six months after the third dose, if the first dose was received at < 12 months of age	---
<b>Poliomyelitis</b>					

Child < 4 years of age	No sooner than four weeks after the first dose	No sooner than four weeks after the second dose	No sooner than six months after the third dose, if the third dose was received at < 4 years of age	---
Child between 4 and 18 years of age	No sooner than four weeks after the first dose	No sooner than six months after the second dose	No sooner than six months after the third dose, if the third dose was received at < 4 years of age	---
<b>Measles, Mumps, Rubella</b> Child 4 years of age or older	No sooner than one month after the first dose	---	---	---
<b><i>Haemophilus influenzae type b</i></b>				
Child 7-11 months of age	No sooner than two months after the first dose	---	---	---
Child 12-14 months of age	No sooner than two months after the first dose	No sooner than two months after the second dose if the first or second dose was received at < 12 months of age	---	---
Child 15-59 months of age	---  (A child 15 through 59 months of age is required to have one dose of vaccine.)	---	---	---
<b>Hepatitis B</b>	No sooner than four weeks after the first dose  (Only two doses, at least four months apart, are required if the child received the adolescent series using the Merck Recombivax HB Adult Formulation vaccine when the child was 11-15 years of age.)	No sooner than four months after the first dose and two months after the second dose for a child $\geq$ 24 weeks of age who did not receive the adolescent series.	---	---
<b>Hepatitis A</b> (Maricopa County only)	No sooner than six months after the first dose	---	---	---
<b>Varicella</b> (A child 12 months through 12 years of age is required to have one dose of vaccine.)	No sooner than one month after the first dose for a child 13 years of age or older	---	---	---

**R9 6 703. Responsibilities of Individuals and Local Health Agencies for Administering Vaccines**

- A. Upon request of a parent, a local health agency shall provide for the immunization of a child against any disease listed in R9-6-702.
- B. An individual administering a vaccine shall ensure that the dosage and route by which the vaccine is administered is:

1. As recommended by the Centers for Disease Control and Prevention, or
2. According to the manufacturer's recommendations.
- C.** Before administering a vaccine to a child, the individual administering the vaccine shall:
  1. Provide the child's parent with the following information in writing:
    - a. A description of the disease,
    - b. A description of the vaccine,
    - c. A statement of the risks of the disease and the risks and benefits of immunization, and
    - d. Contraindications for administering the vaccine; and
  2. Obtain documentation from the child's parent confirming that the child's parent:
    - a. Was provided the information described in subsection (C)(1),
    - b. Was provided an opportunity to read the information described in subsection (C)(1),
    - c. Was provided an opportunity to ask questions, and
    - d. Requests that the designated vaccine be administered to the child.
- D.** Following the administration of a vaccine, the individual administering the vaccine shall provide to the child's parent or, if a child is immunized at school, to the child to give to the child's parent:
  1. Information in writing about:
    - a. The vaccine administered,
    - b. The reactions to the vaccine that might be expected, and
    - c. The course of action if a reaction to the vaccine occurs that may require medical attention; and
  2. Documentary proof of immunization, according to A.R.S. § 36-674 and R9-6-704(A).

**R9 6 704. Standards for Documentary Proof of Immunization or Immunity**

- A.** An administrator of a school or a child care administrator shall accept any of the following as documentary proof of immunization for a child:
  1. A copy of a document recording the immunizations administered to the child that contains:
    - a. The child's name;
    - b. The child's date of birth;
    - c. The type of vaccine administered;
    - d. The month, day, and year of each immunization; and
    - e. The name of the individual administering the vaccine or the name of the entity that the individual administering the vaccine represents;
  2. A document from an Arizona school or child care recording the child's immunizations, including a print-out from a school-based or child care-based vaccination information system, that contains, in a Department-provided format:
    - a. The child's name;
    - b. The child's date of birth;
    - c. The type of vaccine administered;
    - d. The month, day, and year of each immunization;
    - e. The name and address of the school or child care; and
    - f. The name and signature of the individual at the school or child care providing the document to the child's parent and the date signed;
  3. A document from a school in another state recording the child's immunizations; or
  4. A printout from an immunization registry containing the information in subsections (A)(1)(a) through (e).
- B.** An administrator of a school or a child care administrator shall accept a certification of medical exemption from immunization due to immunity, as specified in R9-6-706(D), as documentary proof of immunity for a child.

**R9 6 705. Responsibilities of Administrators of Schools, Child Care Administrators, and the Department**

- A.** An administrator of a school or a child care administrator shall ensure that:
  1. For each child attending the school or child care, one of the following is maintained at the school or child care for each disease listed in R9-6-702:
    - a. Documentary proof of immunization, as specified in R9-6-704(A), according to Table 7.1;
    - b. Documentary proof of immunization, as specified in R9-6-704(A), demonstrating compliance with Table 7.2;
    - c. Documentary proof of immunity, as specified in R9-6-704(B) and according to R9-6-706(D); or
    - d. A statement of exemption from immunization, as specified in R9-6-706(A) through (C);
  2. Lists are maintained at the school or child care of children who:
    - a. Do not have documentary proof of:
      - i. Immunization for each disease listed in R9-6-702, according to Table 7.1; or
      - ii. Immunity for each disease listed in R9-6-702, according to R9-6-706(D);
    - b. Do not have documentary proof according to subsection (A)(1)(a) or (c) but are in compliance with Table 7.2; or
    - c. Have a statement of exemption from immunization, according to R9-6-706(A), (B), or (C), for any of the diseases listed in R9-6-702;
  3. Except as provided in subsection (D), for a child enrolled in school who does not have one of the documents in subsection (A)(1) for each disease listed in R9-6-702:

- a. The child's parent is notified in writing at the time of school enrollment or, for an enrolled child, at the time of review of immunization documentation that the child:
  - i. Is not in compliance with Arizona immunization requirements; and
  - ii. Except as required by 42 U.S.C. 11301, will be excluded from school entry, according to A.R.S. § 15-872(B), unless the documentation required in subsection (A)(1) is provided for each disease listed in R9-6-702 before school entry; and
- b. The child is excluded from school entry if the required documentation is not provided before school entry; and
- 4. Except as provided in subsection (D), for a child enrolled in a child care who does not have one of the documents in subsection (A)(1) for each disease listed in R9-6-702:
  - a. The child's parent is notified in writing before or at the time of child care entry or, for an enrolled child, at the time of review of immunization documentation that the child:
    - i. Is not in compliance with Arizona immunization requirements, and
    - ii. May attend the child care for not more than 15 days from the date of child care entry without providing one of the documents in subsection (A)(1) for each disease listed in R9-6-702; and
  - b. The child is excluded from child care entry if the required documentation is not provided for the child within 15 days following child care entry.
- B.** If an administrator of a school or a child care administrator questions the accuracy of a document provided for a child as documentary proof of immunization or immunity and is unable to verify the accuracy of the document, the administrator of the school or the child care administrator shall notify the child's parent in writing that:
  - 1. For a child attending a school:
    - a. The administrator of the school cannot verify compliance with Arizona immunization requirements on the basis of the documents provided; and
    - b. Except as required by 42 U.S.C. 11301, the child will be excluded from school entry, according to A.R.S. § 15-872(B), until the child's parent provides to the school documentation that meets the requirements in R9-6-704 or R9-6-706;
  - 2. For a child attending a child care:
    - a. The child care administrator cannot verify compliance with Arizona immunization requirements on the basis of the documents provided; and
    - b. The child may attend the child care for not more than 15 days after the date of child care entry without the child's parent providing to the child care documentation that meets the requirements in R9-6-704 or R9-6-706; and
  - 3. The child's parent may bring the child to a physician, a registered nurse practitioner, a local health agency, or, as authorized under A.R.S. § 32-1974, a pharmacist as defined in A.R.S. § 32-1901 to:
    - a. Review the child's immunization history,
    - b. Provide needed immunizations, and
    - c. Provide the required documentation.
- C.** An administrator of a school or a child care administrator shall not allow a child to attend the school or child care during an outbreak of a disease listed in R9-6-702, as determined by the Department or a local health agency, for which the child lacks:
  - 1. Documentary proof of immunization, according to R9-6-704(A); or
  - 2. Documentary proof of immunity, according to R9-6-704(B).
- D.** If the Department receives notification from the Centers for Disease Control and Prevention that there is a shortage of a vaccine for a disease listed in R9-6-702, or that the amount of a vaccine for a disease listed in R9-6-702 is being limited, the Department shall:
  - 1. Determine whether:
    - a. Compliance with exclusion requirements in subsections (A)(3) and (4) is suspended for the vaccine in limited supply, or
    - b. A different vaccine or a combination of different vaccines may substitute for the vaccine in limited supply;
  - 2. Provide notification in writing to each school and child care in this state:
    - a. Of the shortage or limitation of the vaccine;
    - b. Whether the Department is:
      - i. Suspending compliance with exclusion requirements in subsections (A)(3) and (4) on the basis of the vaccine in limited supply; or
      - ii. Recommending an alternative vaccine or combination of vaccines to satisfy the requirement R9-6-702 for the vaccine in limited supply and, if so, the Department's recommendation; and
    - c. If known, when the shortage or limitation of the vaccine is expected to end and the vaccine to be available; and
  - 3. Upon receiving notification from the Centers for Disease Control and Prevention that the vaccine is available, notify each school and child care in this state:
    - a. That the vaccine is available, and
    - b. If applicable, the date that compliance with exclusion requirements in subsections (A)(3) and (4) will be reinstated.
- E.** The Department shall notify each school and child care in this state if the Department no longer requires compliance with subsection (A) for a disease listed in R9-6-702.

## **R9 6 706.Exemptions from Immunizations**

**A.** For a child attending a school, the child is exempt from the applicable immunization requirements in R9-6-702 for personal beliefs, as allowed by A.R.S. § 15-873(A)(1), if the child's parent submits to the school a statement of exemption from immunization for personal beliefs, in a Department-provided format, that contains:

1. The parent's name,
2. The child's name,
3. The child's date of birth,
4. The immunizations from which the child's parent is requesting an exemption,
5. A statement that the parent is requesting the exemption based on personal beliefs, and
6. The signature of the child's parent and the date signed.

**B.** For a child attending a child care, the child is exempt from the applicable immunization requirements in R9-6-702 for religious beliefs, as allowed in A.R.S. § 36-883(C), if the child's parent submits to the child care a statement of exemption from immunization for religious beliefs, in a Department-provided format, that contains:

1. The parent's name,
2. The child's name;
3. The child's date of birth;
4. The immunizations from which the child's parent is requesting an exemption;
5. A statement that the parent is requesting the exemption based on religious beliefs, and
6. The signature of the child's parent and the date signed.

**C.** A child is exempt from the applicable immunization requirements in R9-6-702, as allowed by A.R.S. § 15-873(A)(2), if the child's parent submits to a school or child care a certification of medical exemption from immunization, in a Department-provided format, that contains:

1. The parent's name;
2. The child's name;
3. The child's date of birth;
4. The immunizations from which the child's parent is requesting an exemption;
5. A statement that the parent is requesting a medical exemption according to A.R.S. § 15-873(A)(2);
6. Statements from a physician or registered nurse practitioner that:
  - a. The immunizations specified according to subsection (C)(4) may be harmful to the child's health;
  - b. Indicate the specific nature of the medical condition or circumstance that precludes immunization;
  - c. Indicate whether the medical exemption is permanent or temporary; and
  - d. If the medical exemption is temporary, provide the date the medical exemption ends;
7. The signature of the physician or registered nurse practitioner providing the medical exemption and the date signed; and
8. The signature of the child's parent and the date signed;

**D.** A child is exempt from the applicable immunization requirements in R9-6-702 due to immunity if the child's parent submits to a school or child care:

1. A certification of medical exemption from immunization due to immunity, in a Department-provided format, that contains:
  - a. The parent's name;
  - b. The child's name;
  - c. The child's date of birth;
  - d. The name of each disease for which the child's parent is requesting an exemption from immunization requirements;
  - e. A statement that the parent is requesting a medical exemption from immunization due to the child's immunity to a disease;
  - f. A statement from a physician or registered nurse practitioner that the physician or registered nurse practitioner has determined that the child is immune to the disease specified according to subsection (D)(1)(d), for which an exemption from immunization requirements is being requested, based on:
    - i. For measles, rubella, or varicella, a review by the physician or registered nurse practitioner of laboratory evidence of immunity for the child; or
    - ii. For a disease other than measles, rubella, or varicella, a review by the physician or registered nurse practitioner of either:
      - (1) Laboratory evidence of immunity for the child, or
      - (2) The medical records of the physician or registered nurse practitioner;
  - g. The signature of the physician or registered nurse practitioner providing the medical exemption and the date signed; and
  - h. The signature of the child's parent and the date signed; and
2. If applicable, a copy of the laboratory evidence of immunity.

**E.** An administrator of a school or a child care administrator shall:

1. Include a child's exemption from the requirements in R9-6-702 in the documentation required in R9-6-705(A)(1); and
2. If a child has a temporary medical exemption:
  - a. Allow the child to attend a school or child care until the date the temporary exemption ends; and

- b. At least 30 calendar days before the temporary medical exemption ends, notify the child's parent in writing of the date by which the child is required to complete all immunizations.

**R9 6 707. Reporting Requirements**

**A.** By November 15 of each year, an administrator of a school shall submit to the Department a report, in a Department-provided format, that contains:

1. The name, the physical address, and, if different, the mailing address of the school;
2. The date of the report;
3. Whether the school is a:
  - a. Charter school, as defined in A.R.S. § 15-101;
  - b. Private school, as defined in A.R.S. § 15-101; or
  - c. Public school, as defined in A.R.S. § 15-101;
4. The name, email address, and telephone number of an individual to contact for the school;
5. The name and district number of the school district, if applicable;
6. The county in which the school is located;
7. The number of children enrolled at the school in designated grades, as of the date of the report; and
8. The number of children in each of the designated grades who:
  - a. Have received each immunization required according to Table 7.1;
  - b. Have received an immunization required according to Table 7.1 or submitted a certification of medical exemption from immunization due to immunity, according to R9-6-706(D), for each of the diseases in R9-6-702, including the number for each disease for which certification of medical exemption from immunization due to immunity was submitted;
  - c. Have an exemption from immunization for personal beliefs, according to R9-6-706(A), for one or more of the diseases in R9-6-702, including the number for each disease;
  - d. Have a medical exemption from immunization, according to R9-6-706(C) for one or more of the diseases in R9-6-702, including:
    - i. The number for each disease, and
    - ii. Whether the medical exemption is temporary or permanent; or
  - e. Are receiving immunizations required according to Table 7.2, and the number of doses of each vaccine received.

**B.** By November 15 of each year, a child care administrator shall submit to the Department a report, in a Department-provided format, that contains:

1. The name, the physical address, and, if different, the mailing address of the child care;
2. The date of the report;
3. The name, email address, and telephone number of an individual to contact for the child care;
4. The Department license or certificate number of the child care, as applicable;
5. The name of the child care administrator; and
6. The number of children attending the child care who are at least 18 months of age and not attending a school, as of the date of submission of the report, in each of the following categories:
  - a. Children who have received each immunization required according to Table 7.1;
  - b. Children who have received an immunization required according to Table 7.1 or submitted a certification of medical exemption from immunization due to immunity, according to R9-6-706(D), for each of the diseases in R9-6-702, including the number for each disease for which laboratory evidence of immunity was submitted;
  - c. Children who have an exemption from immunization for religious beliefs, according to R9-6-706(B), for one or more of the diseases in R9-6-702, including the number for each disease;
  - d. Children who have a medical exemption from immunization, according to R9-6-706(C), for one or more of the diseases in R9-6-702, including:
    - i. The number for each disease, and
    - ii. Whether the medical exemption is temporary or permanent; or
  - e. Children who are receiving immunizations required according to Table 7.2, and the number of doses of each vaccine received.

**R9 6 708. Release of Immunization Information**

In addition to the persons who have access to immunization information according to A.R.S. § 36 135(D), and consistent with the limitations in A.R.S. § 36 135(E) and (H), the Department may release immunization information to:

1. An authorized representative of a local health agency for the control, investigation, analysis, or follow-up of disease;
2. A child care administrator, to determine the immunization status of a child in the child care;
3. An authorized representative of the federal Women, Infants, and Children Program administered by the Department, to determine the immunization status of children enrolled in the federal Women, Infants, and Children Program;
4. An individual or organization authorized by the Department to conduct medical research to evaluate medical services and health-related services, as defined in A.R.S. § 36-401, health quality, immunizations data quality, and efficacy; or
5. An authorized representative of an out-of-state agency, including:
  - a. A state health department,
  - b. A health agency,

- c. A school or child care,
- d. A health care provider, or
- e. A state agency that has legal custody of a child.

## Statutory Authority

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

A. The director shall:

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

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

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

the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

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

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

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

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

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

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

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

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

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

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact.

The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

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

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the

requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

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

**15-872. Proof of immunization; noncompliance; notice to parents; civil immunity**

A. The director of the department of health services, in consultation with the superintendent of public instruction, shall develop by rule standards for documentary proof.

B. A pupil shall not be allowed to attend school without submitting documentary proof to the school administrator unless the pupil is exempted from immunization pursuant to section 15-873.

C. Each public school shall make full disclosure of the requirements and exemptions as prescribed in this section and section 15-873.

D. On enrollment, the school administrator shall suspend that pupil if the administrator does not have documentary proof and the pupil is not exempted from immunization pursuant to section 15-873.

E. Notwithstanding subsections B and D of this section, a pupil may be admitted to or allowed to attend a school if the pupil has received at least one dose of each of the required immunizations prescribed pursuant to section 36-672 and has established a schedule for the completion of required immunizations. The parent, guardian or person in loco parentis of a pupil shall present to the school administrator documentary proof of the immunizations received and a schedule prepared by the pupil's physician or registered nurse practitioner or a health agency for completion of additional required immunizations.

F. The school administrator shall review the school immunization record for each pupil admitted or allowed to continue attendance pursuant to subsection E of this section at least twice each school year until the pupil receives all of the required immunizations and shall suspend a pupil as prescribed in subsection G of this section who fails to comply with the immunization schedule. Immunizations received by a pupil shall be entered in the pupil's school immunization record.

G. Unless proof of an exemption from immunization pursuant to section 15-873 is provided, a pupil who is admitted or allowed to continue to attend and who fails to comply with the immunization schedule within the time intervals specified by the schedule shall be suspended from school attendance until

documentary proof of the administration of another dose of each appropriate immunizing agent is provided to the school administrator.

H. The provisions of subsections B, D and E of this section do not apply to homeless pupils until the fifth calendar day after enrollment.

I. A school and its employees are immune from civil liability for decisions concerning the admission, readmission and suspension of a pupil that are based on a good faith implementation of the requirements of this article.

#### 15-873. Exemptions; nonattendance during outbreak

A. Documentary proof is not required for a pupil to be admitted to school if one of the following occurs:

1. The parent or guardian of the pupil submits a signed statement to the school administrator stating that the parent or guardian has received information about immunizations provided by the department of health services and understands the risks and benefits of immunizations and the potential risks of nonimmunization and that due to personal beliefs, the parent or guardian does not consent to the immunization of the pupil.

2. The school administrator receives written certification that is signed by the parent or guardian and by a physician or a registered nurse practitioner, that states that one or more of the required immunizations may be detrimental to the pupil's health and that indicates the specific nature and probable duration of the medical condition or circumstance that precludes immunization.

B. An exemption pursuant to subsection A, paragraph 2 is only valid during the duration of the circumstance or condition that precludes immunization.

C. Pupils who lack documentary proof of immunization shall not attend school during outbreak periods of communicable immunization-preventable diseases as determined by the department of health services or local health department. The department of health services or local health department shall transmit notice of this determination to the school administrator responsible for the exclusion of the pupils.

#### 15-874. Records; reporting requirements

A. Each pupil's immunizations shall be recorded on the school immunization record. The school immunization record shall be a standardized form developed by the department of health services in conjunction with the department of education and provided by the department of health services and shall be a part of the mandatory permanent student record. The records are open to inspection by the department of health services and the local health department.

B. Each immunization record shall contain at least the following information:

1. The pupil's name and birth date.

2. The date of the pupil's admission to the school.

3. The type of immunizing agents administered to the pupil.

4. The date each dose of immunizing agent is administered to the pupil.
  5. The established schedule for completion of immunizations if the pupil is admitted to or allowed to continue to attend a school pursuant to section 15-872, subsection E.
  6. Laboratory evidence of immunity if this evidence is presented as part of a pupil's documentary proof.
  7. If an exemption from immunization as provided in section 15-873 is submitted to the school administrator, the date the exemption is submitted and the reason for the exemption.
  8. Additional information prescribed by the director of the department of health services by rule.
- C. A school shall transfer an immunization record with the mandatory permanent student record and provide at no charge, on request, a copy of the immunization record to the parent or guardian of the pupil.
- D. By November 30 of each school year, each school district and private school shall complete and file a report with the local health department and the department of health services, using forms provided by the department of health services. The report shall state the number of pupils attending who have completed required immunizations or who have submitted laboratory evidence of immunity, the number of pupils attending with uncompleted required immunizations and the number of pupils attending with an exemption from immunization pursuant to section 15-873.

**36-672. Immunizations; department rules; prohibitions**

- A. Consistent with section 15-873, the director shall adopt rules prescribing required immunizations for school attendance, the approved means of immunization and indicated reinforcing immunizations for diseases, and identifying types of health agencies and health care providers that may sign a laboratory evidence of immunity. The rules shall include the required doses, recommended optimum ages for administration of the immunizations, persons who are authorized representatives to sign on behalf of a health agency and other provisions necessary to implement this article.
- B. The director, in consultation with the superintendent of public instruction, shall develop by rule standards for documentary proof.
- C. The following immunizations are not required for school attendance:
1. The immunization against the human papillomavirus.
  2. An immunization for which a United States food and drug administration emergency use authorization has been issued.
- D. An immunization must be prescribed by a rule adopted pursuant to subsection A of this section before the immunization may be required for in-person school attendance.
- E. Pursuant to section 1-602, this section does not preclude a parent's right to make health care decisions for the parent's minor child.

**36-674. Providing proof of immunization**

A physician, local health department or school nurse administering an immunization shall furnish documentary proof of immunization to the person immunized or, if that person is a child, to the child's parent or guardian or the person in loco parentis of the child.

**36-883. Standards of care; rules; classifications**

A. The director of the department of health services shall prescribe reasonable rules regarding the health, safety and well-being of the children to be cared for in a child care facility. These rules shall include standards for the following:

1. Adequate physical facilities for the care of children, such as building construction, fire protection, sanitation, sleeping facilities, isolation facilities, toilet facilities, heating, ventilation, indoor and outdoor activity areas and, if provided by the facility, transportation safely to and from the premises.
2. Adequate staffing per number and age groups of children by persons who are qualified by education or experience to meet their respective responsibilities in the care of children.
3. Activities, toys and equipment to enhance the development of each child.
4. Nutritious and well-balanced food.
5. Encouragement of parental participation.
6. Exclusion of any person from the facility whose presence may be detrimental to the welfare of children.

B. The department shall adopt rules pursuant to title 41, chapter 6 and section 36-115.

C. Any rule that relates to educational activities, physical examination, medical treatment or immunization shall include appropriate exemptions for children whose parents object on the ground that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent or child is an adherent or member.

D. The department of health services shall conduct a comprehensive review of its rules at least once every two years. Before conducting this review, the department shall consult with agencies and organizations that are knowledgeable about the provision of child care facilities to children, including:

1. The department of economic security.
2. The department of education.
3. The office of the state fire marshal.
4. The league of Arizona cities and towns.
5. Citizen groups.
6. Licensed child care facility representatives.

7. The department of child safety.

E. The department shall designate appropriate classifications and establish corresponding standards pertaining to the type of care offered. These classifications shall include:

1. Facilities offering infant care.
2. Facilities offering specific educational programs.
3. Facilities offering evening and nighttime care.

F. Rules for the operation of child care facilities shall be stated in a way that clearly states the purpose of each rule.

**BOARD OF PSYCHOLOGIST EXAMINERS**

Title 4, Chapter 26, Article 4, Behavior Analysis



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** Dec 6, 2022

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

**FROM:** Council Staff

**DATE:** Oct 24, 2022

**SUBJECT: BOARD OF PSYCHOLOGIST EXAMINERS**  
Title 4, Chapter 26, Article 4, Behavior Analysis

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### Summary

This Five-Year Review Report (5YRR) from the Board of Psychologist Examiners relates to rules in Title 4, Chapter 26, Articles 4 (Behavioral Analysis).

In the 2017 5YRR, the Board indicated it did not intend to amend or repeal any of the reviewed rules. However, new statutory requirements, stakeholder requests, and shifting education and training requirements prompted the Board to amend certain rules. The Board conducted a regular rulemaking to amend rules 403 (Application for Initial License), 407 (License for Reciprocity), and 409 (Continuing Education Requirement) and created rule 404.2 (Supervised Experience Requirement). This regular rulemaking was approved by the Council on October 2, 2018. An additional regular rulemaking was submitted to the Council for approval at the October 4, 2022 Council meeting.

### Proposed Action

At this time there is no proposed course of action as the Board submitted a regular rulemaking that was approved in part and returned in part at the October 4, 2022 Council meeting.

**1. Has the agency analyzed whether the rules are authorized by statute?**

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board states that the economic impact of the rules has not differed from original economic impact statements at adoption of rules. All rules made have had minimal or no economic impact on the Board, other state agencies, private entities, small businesses, and consumers.

The Board collected \$157,985 in behavior analyst program revenue in fiscal year 2021. This revenue primarily consisted of application and licensing fees, with a small amount of revenue collected for other services. The Board has 4.5 full time employees (FTEs); approximately 1.75 FTEs are assigned to the regulatory responsibilities of behavior analysts.

Stakeholders include the Board, applicants for behavioral analyst licensure, and behavioral analyst licensees.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board states that notwithstanding any costs imposed by statutes or caused by the rules of other agencies, the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

**4. Has the agency received any written criticisms of the rules over the last five years?**

The Board indicates that they have not received any written criticisms of the rules in the last five years

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board states that the rules are clear, concise, and understandable.

**6. Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board states that the rules are consistent with other rules and statutes.

**7. Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board states that the rules are generally effective in achieving its objectives.

**8. Has the agency analyzed the current enforcement status of the rules?**

The Board states they enforce the rules as written and in a consistent and fair manner.

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

The Board indicates there is no corresponding federal law applicable to the reviewed rules and therefore this item does not apply.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

All the reviewed rules were adopted after July 29, 2010. All the licenses for which a fee is established under R4-26-402 comply with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

**11. Conclusion**

Because a regular rulemaking has already been submitted to address these rules, Council staff believes the Board has submitted an adequate report and recommends approval of the report.



STATE OF ARIZONA  
BOARD OF PSYCHOLOGIST EXAMINERS  
1740 WEST ADAMS STREET, SUITE 3403  
PHOENIX, AZ 85007  
PH: 602.542.8162      FX: 602.542.8279  
WEBSITE: [www.psychboard.az.gov](http://www.psychboard.az.gov)

DOUGLAS A. DUCEY  
Governor

HEIDI HERBST PAAKKONEN  
Executive Director

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August 12, 2022

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Arizona Board of Psychologist Examiners; A.A.C. Title 4. Professions and Occupations, Chapter 26. Board of Psychologist Examiners, Article 4. Behavior Analysis; Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of the Arizona Board of Psychologist Examiners for A.A.C. Title 4. Professions and Occupations, Chapter 26. Board of Psychologist Examiners, Article 4. Behavior Analysis which is due on August 31, 2022

The Arizona Board of Psychologist Examiners hereby certifies compliance with A.R.S. 41-1091. For questions about this report, please contact me at 602.542.3018 or [heidi.paakkonen@psychboard.az.gov](mailto:heidi.paakkonen@psychboard.az.gov).

Regards,

A handwritten signature in cursive script that reads "Heidi Herbst Paakkonen".

Heidi Herbst Paakkonen, MPA  
Executive Director

**Arizona Board of  
 Psychologist Examiners**  
**5 YEAR REVIEW REPORT**  
**A.A.C. Title 4. Professions and  
 Occupations**  
**Chapter 26. Board of  
 Psychologist Examiners**  
**Article 4. Behavior Analysis**

**August 31, 2022**

**1. Authorization of the rule by existing statutes**

The agency rules are authorized under A.R.S. § 32-2063(A)(1). The specific statutes that authorize specific rules are listed here:

<b>Rule</b>	<b>Statute</b>
R4-26-401. Definitions	A.R.S. § 32-2091
R4-26-402. Fees and Charges	A.R.S. § 32-2091.01(A) and (B)
R4-26-403. Application for Initial License	A.R.S. §§ 32-2091.02 and 32-2091.04
R4-26-404. Examination Requirement	A.R.S. § 32-2091.03(A)
R4-26-404.1. Education Requirement	A.R.S. § 32-2091.03(A)
R4-26-404.2. Supervised Experience Requirement	A.R.S. § 32-2091.03(A)
R4-26-405. Coursework Requirement	A.R.S. § 32-2091.03(A)
R4-26-406. Ethical Standard	A.R.S. § 32-2091(12)(dd)
R4-26-407	This rule is repealed.
R4-26-408. License Renewal	A.R.S. § 32-2091.07
R4-26-409. Continuing Education Requirement	A.R.S. § 32-2091.07(E)
R4-26-410. Voluntary Inactive Status	A.R.S. § 32-2091.06(E)
R4-26-411. License Reinstatement	A.R.S. §§ 32-2091.06(G) and 32-2091.07
R4-26-412. Client Records	A.R.S. §§ 32-2091(2) and 32-2091.13
R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number	A.R.S. §§ 32-2091.06(F) and 32-2091.07(C)
R4-26-414. Complaints and Investigations	A.R.S. §32-2091.09(A)

R4-26-415. Informal Interview	A.R.S. § 32-2091.09(G)
R4-26-416. Rehearing or Review of Decision	A.R.S. § 41-1092.09
R4-26-417. Licensing Time Frames	A.R.S. § 41-1073

2. **The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
R4-26-401. Definitions	The objective of the rule is to define terms used in the context of statute and rule in a manner not adequately provided by a dictionary. This rule facilitates comprehension of certain terms found elsewhere in the rules.
R4-26-402. Fees and Charges	The objective of this rule is to specify the fees the Board charges for its licensing activities. This rule clarifies to the applicant the precise fee amount to submit as A.R.S. § 32-2091.01(A) and (B) establish the maximum fee the Board is authorized to charge.
R4-26-403. Application for Initial License	The objective of the rule is to specify the required content of an application for licensure and the supporting documentation required under A.R.S. §§ 32-2091.02 and 32-2091.04. Prospective applicants and other interested parties obtain clarity from this rule with respect to the questions that are posed on the licensure application.
R4-26-404. Examination Requirement	The objective of the rule is to specify the required examination and its passing standard for purposes of licensure, the authority for which is at A.R.S. § 32-2091.03(A).
R4-26-404.1. Education Requirement	The objective of the rule is to provide specific criteria that the Board applies to determine whether an applicant's academic degree meets requirements for licensure as required by A.R.S. § 32-2091.03(A).
R4-26-404.2. Supervised Experience Requirement	The objective of this rule is to set forth procedures under A.R.S. § 32-2091.03(A) pertaining to supervised experience requirements and to provide guidance and clarification to trainees and supervisors before training begins. Training programs may tailor training experiences to meet licensure requirements based on the rule; potential applicants also obtain clarity of the training requirements for licensure prior to applying.
R4-26-405. Coursework Requirement	The objective of the rule is to provide the specific criteria that the Board applies to determine whether an applicant's academic coursework meets requirements for licensure as required by A.R.S. § 32-2091.03(A). Potential applicants also obtain clarity of the academic requirements for licensure prior to applying.
R4-26-406. Ethical Standard	The objective of the rule is to incorporate by reference the ethical standards contained in the Ethics Code for Behavior Analysts (Code) adopted by the Behavior Analyst Certification Board (BACB) effective January 1, 2022, for compliance with A.R.S. § 32-2091(12)(dd). This rule informs licensees and the public that Arizona licensed behavior analysts are to adhere to the ethical standards and principles of the Code.
R4-26-407	This rule has been repealed.
R4-26-408. License Renewal	Pursuant to A.R.S. § 32-2091.07, the objective of the rule is to set forth the deadlines for timely renewal of licenses, specify the contents of an application for renewal of licenses, and provide information pertaining to the continuing education audit conducted by the Board. This rule informs licensees what is required information to provide with a license renewal application, outlines the license renewal process, and it provides clarification pertaining to the continuing education audit.

R4-26-409. Continuing Education Requirement	The objective of the rule is to establish the continuing education requirements authorized under A.R.S. § 32-2091.07(E). This rule provides specific continuing education requirements licensees must complete, identifies what options are available to licensees with respect to continuing education, and explains what constitutes qualifying activities and activity providers.
R4-26-410. Voluntary Inactive Status	The objective of the rule is to establish the specific requirements pursuant to A.R.S. § 32-2091.06(E) for license reinstatement from inactive to active status, and for compliance with the requirement to maintain and update professional knowledge and capability to practice as a behavior analyst. This rule clarifies the reinstatement process for inactive licensees who wish to change that status, and prescribes the continuing education hours required for reinstatement.
R4-26-411. License Reinstatement	The objective of this rule is to specify the requirements and procedures for applying for licensure reinstatement from inactive to active status pursuant to A.R.S. §§ 32-2091.06(G) and 32-2091.07. This rule clarifies the application process for inactive licensees who wish to understand and comply with the requirements.
R4-26-412. Client Records	The objective of this rule is to clarify the manner in which a licensee is required to maintain confidential client records in accordance with A.R.S. §§ 32-2091(2) and 32-2091.13. This rule protects the public by enforcing that confidential information is not disclosed except under certain specific circumstances.
R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number	The objective of this rule is to provide notice to licensees the Board communicates with them using the information the licensee has provided pursuant to A.R.S. §§ 32-2091.06(F) and 32-2091.07(C). This requirement helps ensure a licensee is aware of the requirement and the importance to keep the Board apprised of changes in contact information.
R4-26-414. Complaints and Investigations	The objective of this rule is to specify who may file a complaint, and what is required of a complainant under the authority of A.R.S. §32-2091.09(A). This rule brings clarity to what is necessary to effectively facilitate the Board's investigation.
R4-26-415. Informal Interview	The objective of the rule is to set forth the process used by the Board to notice a licensee prior to conducting an informal interview, as well as the process for conducting an informal interview in accordance with A.R.S. § 32-2081(I). This rule provides procedural guidelines to licensees, attorneys, complainants, as well as information to the general public.
R4-26-416. Rehearing or Review of Decision	The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision under A.R.S. § 41-1092.09 and 41-1062(B). This rule provides procedural information for licensees and their attorneys who may wish to file a motion for rehearing or review under A.R.S. § 12-901.
R4-26-417. Licensing Time Frames	Pursuant to A.R.S. § 41-1073, the objective of the rule is to set forth the general time frames for completion of applications for licensure filed with the Board. This rule provides current or future applicants with due process time frames in which to expect certain application notices and a decision by the Board regarding the application for licensure.
R4-26-418. Mandatory Reporting Requirement	The objective of this rule is to inform a licensee of the statutory requirement that the licensee is required by A.R.S. §32-3208 to timely notify the Board of certain criminal charges. This rule enables the Board to fulfill its obligation to protect the public.

**3. Are the rules effective in achieving their objectives?**

**Yes**  **No**

The Board's reviews of the rules at various points in time in 2020 and in 2021 concluded that the rules are generally

effective in achieving their objectives. The Board effectively protects the public within its statutory authority by evaluating applicant's qualifications for licensure; investigating allegations of unprofessional conduct; adjudicating complaints; and taking appropriate remedial, corrective, and disciplinary action.

4. Are the rules consistent with other rules and statutes? Yes  No

5. Are the rules enforced as written? Yes  No

The Board enforces the rules as written, and in a consistent and fair manner. No complaints concerning the Board's enforcement of the rules have been submitted to the Governor's Regulatory Review Council.

6. Are the rules clear, concise, and understandable? Yes  No

7. Has the agency received written criticisms of the rules within the last five years? Yes No

8. Economic, small business, and consumer impact comparison:

The economic impact of the rules has not differed from original economic impact statements at adoption of rules. All rules made have had minimal or no economic impact on the Board, other state agencies, private entities, small businesses, and consumers. In this comparison, Minimal means less than \$1,000, moderate means \$1,000, to \$10,000 and substantial means more than \$10,000.

The Board collected \$157,985 in behavior analyst program revenue in fiscal year 2021. This revenue primarily consisted of application and licensing fees, with a small amount of revenue collected for other services (such as fees collected for processing public records requests). The Board has 4.5 FTEs; approximately 1.75 FTEs are assigned to the regulatory responsibilities of behavior analysts.

9. Has the agency received any business competitiveness analyses of the rules? Yes No

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In the 2017 five-year-review report, the Board indicated it did not intend to amend or repeal any of the reviewed rules. However, new statutory requirements, stakeholder requests, shifting education and training requirements of the BACB, and the identification of superfluous fees have prompted the Board to amend certain rules in 2020, and again in a rulemaking scheduled for review by the Governor's Regulatory Review Council during its October 4, 2022 meeting.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

Notwithstanding any costs imposed by statutes or caused by the rules of other agencies, the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes No

There is no federal law specifically applicable to the reviewed rules.

**13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. §41-1037 or explain why the agency believes an exception applies:**

All the reviewed rules were adopted after July 29, 2010. All the licenses for which a fee is established under R4-26-402 comply with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

**14. Proposed course of action**

Consistent with the Board's ongoing review of the effectiveness of the rules, the Board is currently proposing some revisions to certain rules that include eliminating unnecessary fees, adding language reflecting the new fingerprint clearance card application requirement (enacted in statute in 2021), defining a reciprocity application pathway, updating coursework requirements to align with those of the Behavior Analyst Certification Board (BACB), and identifying additional continuing education specifications and options for license renewal.

STATE	APPLICATION FEE	RENEWAL FEE	# OF CONTINUING EDUCATION UNITS	APPLICATION PROCESSING TIME FRAMES?
CT	\$ 350.00	\$ 175.00	30 (Consistent with the BACB requirements)	None
LA	\$ 400.00	\$ 200.00	30 (Consistent with the BACB requirements)	None
MI	\$ 443.70	\$ 367.20	30 (Consistent with the BACB requirements)	None
MO	\$ 350.00	\$ 350.00	30 (Consistent with the BACB requirements)	None
WA	\$ 250.00	\$ 350.00	30 (Consistent with the BACB requirements)	None
OR	\$ 150.00	\$ 200.00	16 hours (May be a subset of the BACB requirements)	None
MS	\$ 250.00	\$ 250.00	6 hours, plus 30 required by the BACB	None
MT	\$ 600.00	\$ 400.00	20 hours (May be a subset of the BACB requirements)	None
NV	\$225.00*	\$ 400.00	30 (Consistent with the BACB requirements)	None
ND	\$ 550.00	\$ 400.00	2 hours, plus 30 required by the BACB	None
KY	\$ 500.00	\$ 300.00	30 (Consistent with the BACB requirements)	None
NJ	\$ 200.00	\$ 400.00	30 (Consistent with the BACB requirements)	None
WY	\$ 475.00	\$ 200.00	30 (Consistent with the BACB requirements)	None
OH	\$ 325.00	\$ 350.00	30 (Consistent with the BACB requirements)	None
HI	\$ 260.00	\$ 500.00	30 (Consistent with the BACB requirements)	None
IA	\$ 300.00	\$ 300.00	30 (Consistent with the BACB requirements)	None
LA	\$ 400.00	\$ 306.00	30 (Consistent with the BACB requirements)	None
MD	\$ 350.00	\$ 851.00	30 (Consistent with the BACB requirements)	None
NC	\$ 250.00	\$ 400.00	30 (Consistent with the BACB requirements)	None
KY	\$ 400.00	\$ 300.00	30 (Consistent with the BACB requirements)	None
<b>MEDIAN</b>	<b>\$ 350.00</b>	<b>\$ 350.00</b>		

\* Does not include the state examination fee which is described in rule as "actual costs to the Board"

# Regulatory Cost Tracker

## FY2023 Projection

### Arizona Board of Psychologist Examiners

## Summary

	Psychologists	Behavior Analysts
Direct Costs	\$384,225	\$192,000
Indirect Costs	\$64,650	\$29,650
<b>Total Regulatory Costs</b>	<b>\$448,875</b>	<b>\$221,650</b>
Licensees Renewing	940	375
Applicants	125	150
<b>Regulatory Cost per Licensee/Applicant</b>	<b>\$421</b>	<b>\$422</b>
<b>Per Licensee fee (90%) less credit card fees</b>	<b>\$445</b>	<b>\$445</b>



**§ R4-26-401. Definitions**

A. The definitions in A.R.S. §32-2091 apply in this Article.

B. Additionally, in this Article:

1. "Accredited" means an institution of higher education:

a. In the U.S. is listed with the Council for Higher Education Accreditation,

b. In Canada is a member of the Universities Canada, and

c. Outside of the U.S. or Canada is determined by a member of the National Association of Credential Evaluation Services to have standards substantially similar to those of an institution of higher education in the U.S. or Canada.

2. "Advertising" means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.

3. "Applicant" means an individual who applies to the Board for an initial or renewal license.

4. "BACB" means the Behavior Analyst Certification Board, Inc.<sup>®</sup>.

5. "Confidential information" means:

a. Minutes of an executive session of the Board except as provided under A.R.S. §38-431.03(B);

b. A record that is classified as confidential by a statute or rule applicable to the Board;

c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client's diagnosis, treatment, or personal family life; and

d. The following regarding an applicant or licensee:

i. College or university transcripts if requested from the Board by a person other than the applicant or licensee;

ii. Home address, telephone number, and e-mail address;

iii. Test scores;

iv. Date of birth;

v. Place of birth; and

vi. Social Security number.

6. "Gross negligence" means an extreme departure from the ordinary standard of care.

7. "Inactive status" means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.

8. "License period" means:

a. For a licensee who holds an odd-numbered license, the two years between the first day of the month after the licensee's birth month of one odd-numbered year and the last day of the licensee's birth month of the next odd-numbered year; and

b. For a licensee who holds an even-numbered license, the two years between the first day of the month after the licensee's birth month of one even-numbered year and the last day of the licensee's birth month of the next even-numbered year.

9. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:

a. Nature of the alleged conduct,

b. Severity of the alleged conduct,

c. Recentness of the alleged conduct,

d. Actions taken by the applicant to remedy potential violations, and

e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.

10. "Party" means the Board, an applicant, a licensee, or the state.

11. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.

12. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.

13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.

14. "Renewal year" means:

a. Each odd-numbered year for a licensee who holds an odd-numbered license, and

b. Each even-numbered year for a licensee who holds an even-numbered license.

15. "Supervised experience" means supervised independent fieldwork, practicum, or intensive practicum.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017. Amended by final rulemaking at 26 A.A.R. 1017, effective 7/4/2020.

**§ R4-26-402. Fees and Charges**

A. As specifically authorized by A.R.S. §§32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:

1. Application for an active license: \$350;
2. Renewal of an active license: \$500;
3. Renewal of an inactive license: \$85;
4. Issuance of an initial license: \$500; and
5. Reinstatement of expired license: \$200.

B. Under the specific authority provided by A.R.S. §36-3606(A)(3), the Board establishes and shall collect the following fee to register as an out-of-state health care provider of telehealth services: \$600.

C. As specifically authorized by A.R.S. §32-2091.01(B), the Board establishes and shall collect the following charges for the services specified:

1. Duplicate license: \$25;
2. Duplicate renewal receipt: \$5;
3. Copy of the Board's statutes and rules: \$5;
4. Verification of a license: \$2;
5. Audio recording of a Board meeting: \$10 per meeting;
6. Electronic medium containing the name and address of all licensees: \$.05 per name;
7. Customized electronic medium containing the name and address of all licensees: \$.25 per name;
8. Customized electronic medium: \$.35 per name; and
9. Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.

D. Except as provided by law, including A.R.S. §41-1077, the fees listed in subsections (A) and (B) are not refundable.

**History:**

**Ariz. Admin. Code R4-26-402 Fees and Charges (Arizona  
Administrative Code (2022 Edition))**

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Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final exempt rulemaking at 27 A.A.R. 1272, effective 9/1/2021.

**§ R4-26-403. Application for Initial License**

A. An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. §32-2091.02 shall complete and submit an application form, which is available from the Board office and on its website.

B. Additionally, an applicant shall submit:

1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
2. The application fee required under R4-26-402;
3. A written request that Board staff verify with the BACB that the applicant passed the examination referenced in R4-26-404;
4. As required under A.R.S. §41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
5. The Board's Mandatory Confidential Information form.

C. Additionally, an applicant shall ensure that the following is submitted directly to the Board:

1. Verification of supervised experience that meets the standards specified in R4-26-404.2. For the purpose of licensure, the Board shall accept the following as verification of supervised experience:
  - a. From the supervisor of the experience:
    - i. A copy of the BACB final experience verification form, signed by the supervisor, submitted by the applicant to the BACB when the applicant applied to the BACB for certification; or
    - ii. A completed Board verification form; or
  - b. From the applicant. If the applicant demonstrates to the Board that a supervisor cannot be located, or at the request of the Board, the applicant may submit a copy of each BACB final experience verification form the applicant submitted to the BACB when the applicant applied to the BACB for certification; and
  - c. If the Board requires additional information, the Board shall accept from the applicant or supervisor of the experience:

- i. copy of the plan required under R4-26-404.2(C)(6), and
  - ii. Letters or other documentation from third parties who observed the supervisory relationship;
2. Official transcript for the graduate degree required under R4-26-404.1 submitted by the accredited institution of higher education that awarded the degree;
  3. Official transcript or other official document demonstrating the applicant completed the coursework required under R4-26-405 submitted by the accredited institution of higher education or BACB-approved program in which the coursework was completed; and
  4. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017. Amended by final rulemaking at 24 A.A.R. 3100, effective 12/11/2018. Amended by final rulemaking at 26 A.A.R. 1017, effective 7/4/2020.

**§ R4-26-404. Examination Requirement**

To be licensed as a behavior analyst in Arizona, an individual shall take and pass the examination administered by the BACB for Board Certified Behavior Analysts as part of its certification process.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017.

**§ R4-26-404.1. Education Requirement**

A. This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.

B. To be licensed as a behavior analyst in Arizona, an individual shall have a master's degree or higher completed:

1. From an accredited institution of higher education and
2. In a program that meets the requirements specified by the BACB.

**History:**

Adopted by final rulemaking at 23 A.A.R. 215, effective 3/5/2017. Amended by final rulemaking at 26 A.A.R. 1017, effective 7/4/2020.

**§ R4-26-404.2. Supervised Experience Requirement**

A. Application of this Section:

1. This Section does not apply to an individual who was certified by the BACB with at least 1500 hours of supervised experience before January 1, 2015; and

2. This Section applies in part to an individual who was certified by the BACB with fewer than 1500 hours of supervised experience before January 1, 2015. To be licensed in Arizona, the individual shall complete additional hours of supervised experience to meet the 1500-hour requirement under A.R.S. §32-2091.03 and ensure all hours of supervised experience obtained after December 31, 2014, meet the requirements of this Section.

B. To be licensed as a behavior analyst in Arizona, an individual shall have completed 1500 hours of supervised experience. The Board shall accept, for the purpose of licensure, hours of supervised experience obtained on or after January 1, 2015, that meet the following standards:

1. Supervised independent fieldwork. The supervisee shall be supervised at a frequency that meets the standards of the BACB at the time of supervision;

2. Practicum. The supervisee shall:

a. Participate in a practicum in behavior analysis within a program approved by the BACB;

b. Achieve a passing grade in the practicum;

c. Obtain graduate-level academic credit for the practicum; and

d. Be supervised at a frequency that meets the standard of the BACB at the time of supervision;

3. Intensive practicum. The supervisee shall:

a. Participate in an intensive practicum in behavior analysis within a program approved by the BACB;

b. Achieve a passing grade in the intensive practicum;

c. Obtain graduate-level academic credit for the intensive practicum; and

d. Be supervised at a frequency that meets the standards of the BACB at the time of supervision;

**Ariz. Admin. Code R4-26-404.2 Supervised Experience  
Requirement (Arizona Administrative Code (2022 Edition))**

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4. Combination of experience categories. The supervisee may accrue hours of supervised experience in a single category or may combine any two or three categories listed in subsections (B)(1) through (3). However, the supervisee shall accrue supervised experience in only one category in each supervisory period; and
5. For all categories of supervised experience, the supervisee shall accrue:
  - a. No fewer than 20 hours and no more than 130 hours, including time spent in supervision, each month; or
  - b. The number of hours that meets the standards of the BACB at the time of supervision.
- C. Standards for supervised experience.
  1. Onset of supervised experience. The Board shall not accept, for the purpose of licensure, hours of supervised experience completed before attending courses required under R4-26-405. However, the Board shall accept hours of supervised experience completed concurrent with attending courses required under R4-26-405.
  2. Appropriate activities. The Board shall accept, for the purpose of licensure, hours of supervised experience that demonstrate participation in supervised experiences with various populations, at various sites, with multiple supervisors, and including all of the following activity areas:
    - a. Conducting assessments related to behavioral intervention;
    - b. Designing, implementing, and monitoring skill-acquisition and behavior-reduction programs;
    - c. Overseeing implementation of behavior-analytic programs by others;
    - d. Training, designing behavioral systems, and managing performance; and
    - e. Performing other activities directly related to behavior analysis such as attending planning meetings regarding the behavior analytic program, researching literature related to the program, and talking with others about the program.
  3. Appropriate clients. The Board shall accept, for the purpose of licensure, hours of supervised experience with appropriate clients.
    - a. An appropriate client is one for whom behavior-analytic services are suitable.

b. A client is not appropriate if:

- i. The client is related to the supervisee,
- ii. The client's primary caretaker is related to the supervisee, or
- iii. The supervisee is the client's primary caretaker.

4. Supervisor qualifications. The Board shall accept, for the purpose of licensure, hours of supervised experience only if the supervisor:

a. Was licensed by the state in which the supervision occurred during the period of supervised experience; or

b. If licensure of behavior analysts was not available or not in effect in the state in which the supervision occurred or during the period of supervised experience, was certified as a behavior analyst by the BACB; and

c. Was not related to, subordinate to, or employed by the supervisee during the period of supervised experience. Employment does not include payment made to the supervisor by the supervisee for supervisory services.

5. Nature of supervision. The Board shall accept, for the purpose of licensure, hours of supervised experience that are effective in improving and maintaining the behavior-analytic, professional, and ethical skills of the supervisee.

a. Effective supervision includes:

i. Developing performance expectations for the supervisee;

ii. Observing the supervisee and providing performance feedback on behavior-analytic activities with clients in the natural environment. In person, on-site observation is preferred but use of web cameras, video record, video conferencing, or a similar means that provides synchronous observation is acceptable;

iii. Modeling technical, professional, and ethical behavior for the supervisee;

iv. Guiding behavioral case conceptualization, problem solving, and decision making skills of the supervisee;

v. Reviewing written materials prepared by the supervisee such as behavior programs, data sheets, and reports;

vi. Providing oversight and evaluation of the effects of the supervisee's delivery of behavioral service; and

vii. Evaluating the effects of supervising the supervisee; and

b. Effective supervision may be conducted:

i. Individually for at least half of the total supervised hours in each supervisory period; and

ii. In groups of two to 10 supervisees for no more than half of the total supervised hours in each supervisory period.

6. Supervision plan. The Board shall accept, for the purpose of licensure, hours of supervised experience for which the supervisee and supervisor executed a written plan before starting the supervised experience, which includes the following:

a. States the responsibilities of both the supervisor and supervisee;

b. Requires the supervisor to complete eight hours of supervision training provided by BACB;

c. Includes a description of appropriate activities and instructional objectives;

d. Specifies the measurable circumstance under which the supervisor will complete the supervisee's Experience Verification Form;

e. Delineates the consequences if either supervisor or supervisee does not comply with the plan;

f. Requires the supervisee to obtain written permission from the supervisee's employer or manager when applicable; and

g. Requires both the supervisor and supervisee to comply with the ethical standard specified at R4-26-406.

7. Multiple supervisors or settings. The Board shall accept, for the purpose of licensure, hours of supervised experience provided by multiple supervisors or at multiple settings if all the hours of supervised experience meet the standards specified in subsections (C)(1) through (7) (6).

**History:**

Adopted by final rulemaking at 24 A.A.R. 3100, effective 12/11/2018.

Amended by final rulemaking at 26 A.A.R. 1017, effective 7/4/2020.

**§ R4-26-405. Coursework Requirement**

A. This Section does not apply to an applicant who was certified as a behavior analyst by the BACB before January 1, 2015.

B. To be licensed as a behavior analyst in Arizona, an individual shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under R4-26-404.1, 270 classroom hours of graduate-level instruction. The individual shall ensure that the classroom hours include the following content areas:

1. Ethical and professional conduct in behavior analysis: 45 hours;
2. Concepts and principles of behavior analysis: 45 hours;
3. Research methods in behavior analysis: 45 hours:
  - a. Measurement and data analysis: 25 hours; and
  - b. Experimental design: 20 hours;
4. Applied behavior analysis: 105 hours:
  - a. Fundamental elements of behavior change and specific behavior change procedures: 45 hours;
  - b. Identification of the problem and assessment: 30 hours;
  - c. Intervention and behavior change considerations: 10 hours;
  - d. Behavior change systems: 10 hours; and
  - e. Implementation, management, and supervision: 10 hours; and
- 5.

Discretionary content related to behavior analysis: 30 hours.

C. The Board shall accept classroom hours of graduate-level instruction completed at an accredited institution of higher education or in a program approved by the BACB.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017.



**§ R4-26-406. Ethical Standard**

The In fulfilling its responsibilities under law, the Board shall rely on the most current version of the BACB Professional and Ethical Compliance Code for Behavior Analysts, published by the BACB and available for review at the Board office and online at [www.BACB.com](http://www.BACB.com) unless the Board determines public health and safety is not sufficiently protected by the current version of the BACB Professional and Ethical Compliance Code for Behavior Analysts.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017. Amended by final rulemaking at 26 A.A.R. 1017, effective 7/4/2020.

**§ R4-26-408. License Renewal**

A. A license issued by the Board, whether active or inactive, expires on the last day of a licensee's birth month during the licensee's renewal year.

B. The Board shall provide a licensee with 60 days' notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.

C. To renew a license, a licensee shall, on or before the last day of the licensee's birth month during the licensee's renewal year, submit to the Board a renewal application form, which is available from the Board office and on its website.

D. Additionally, to renew a license, a licensee shall submit:

1. The license renewal fee required under R4-26-402; and
2. If the documentation previously submitted under R4-26-404(B) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired

E. If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.

F. Under A.R.S. §32-2091.07, the license of a licensee who fails to submit a renewal application on or before the last day of the licensee's birth month during the licensee's renewal year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.

G. A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board within two months after last day of the licensee's birth month during the licensee's renewal year:

1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
2. A sworn affidavit that the applicant has not practiced as a behavior analyst in Arizona since the applicant's license expired, and

3. The license renewal and license reinstatement fees.

H. A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:

1. Complying with subsection (G) within one year after the last day of the licensee's birth month during the licensee's renewal year, and
2. Providing proof of competency and qualifications to the Board.

I. A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017. Amended by final rulemaking at 26 A.A.R. 1017, effective 7/4/2020.

**§ R4-26-409. Continuing Education Requirement**

A. A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure that at least four hours of continuing education addresses ethics.

B. During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the number of whole months from the month of license issuance to the end of the license period by 1.25.

C. A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis. The following provide the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis:

1. College or university graduate coursework that directly relates to behavior analysis and is provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed; a course syllabus and transcript are required for documentation;
2. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation; a certificate or letter from the BACB-approved provider is required for documentation;
3. Self-study or correspondence course that is directly related to behavior analysis and offered by a BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
4. Online course that is directly related to behavior analysis and offered by a BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider; a certificate or letter from the BACB-approved provider or a course syllabus and transcript from the accredited educational institution are required for documentation;
5. Teaching a continuing education program offered by a BACB-approved provider or teaching a graduate university or college course offered by an accredited educational institution: One hour of continuing education for

each hour taught; for graduate courses taught, 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;

6. Credentialing activities or events pre-approved for continuing education and initiated by the BACB: One hour of continuing education for each hour of participation; documentation from the BACB is required;

7. Publication of a peer-reviewed article or text book on the practice of behavior analysis or serving as a reviewer or action editor of an article pertaining to behavior analysis: eight hours of continuing education for one publication and one hour of continuing education for one review; and

8. Attending a Board meeting: Three hours for attending a morning or afternoon session of a Board meeting and six hours for attending a full-day Board meeting.

D. The number of hours of continuing education is limited as follows:

1. No more than 50 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(5). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than once during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;

2. No more than 25 percent of the required hours may be obtained from continuing education under each of subsections (C)(3), (6) and (7).

3. No more than six of the required hours may be obtained under subsection (C)(8). Hours obtained under subsection (C)(8) may be used to complete the ethics requirement under subsection (A).

4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.

E. A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:

1. Name of the licensee;

2. Title of the continuing education;

3. Name of the continuing education provider;

4. Date, time, and location of the continuing education; and

5. Number of hours of continuing education obtained.

F. A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.

G. The Board may audit a licensee's compliance with the continuing education requirement. The Board may deny license renewal or take other disciplinary action against a licensee who fails to obtain or document the required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding the continuing education hours.

H. A licensee who cannot comply with the continuing education requirement for good cause may seek an extension of time in which to comply by submitting a written request to the Board with the timely submission of the renewal application required under R4-26-408.

1. Good cause includes but is not limited to illness or injury of the licensee or a close family member, death of a close family member, birth or adoption of a child, military service, relocation, natural disaster, financial hardship, or residence in a foreign country for at least 12 months of the license period.

2. The Board shall not grant an extension longer than one year.

3. A licensee who obtains hours of continuing education during an extension of time provided by the Board shall ensure the hours are reported only for the license period extended.

4. A licensee who cannot comply with the continuing education requirement within an extension may apply to the Board for inactive license status under A.R.S. §32-2091.06(E).

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017. Amended by final rulemaking at 24 A.A.R. 3100, effective 12/11/2018.

**§ R4-26-410. Voluntary Inactive Status**

A. A licensed behavior analyst may request that the Board place the license on inactive status for one of the following reasons:

1. The behavior analyst no longer provides behavior analysis services in Arizona,
2. The behavior analyst is retired, or
3. The behavior analyst is physically or mentally incapacitated or otherwise disabled.

B. To place a license on inactive status, a licensee shall comply with R4-26-408.

C. To remain licensed, a licensee on inactive status shall comply with R4-26-408 on or before the last day of the licensee's birth month during the licensee's renewal year.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017.

**§ R4-26-411. License Reinstatement**

A licensee seeking reinstatement from an inactive to an active license shall:

1. Comply with the provisions of R4-26-408(C) and (D);
2. Submit evidence of completing a pro-rated number of hours of continuing education. The licensee shall calculate the number of continuing education hours required by multiplying the number of whole months that the license was on inactive status by 1.25; and
3. Complete any other requirements the Board determines are necessary to ensure that the licensee has maintained and updated the licensee's ability to practice as a behavior analyst.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**§ R4-26-412. Client Records**

A. A licensee shall not condition release of a client's record on payment for services by the client or a third party.

B. A licensee shall release a client's raw test data to another licensed behavior analyst only after obtaining the client's informed, written consent to the release. Without a client's informed, written consent, a licensee shall release the client's raw test data only to the extent required by law or under court order compelling production.

C. A licensee shall retain all client records under the licensee's control for at least six years from the date of the last client activity. If a client is a minor, the licensee shall retain the client's record for at least three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.

D. Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (C).

E. A licensee who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to the investigation or case until the licensee receives written notice that the investigation is complete or the case is closed.

F. A licensee may retain client records in electronic form. The licensee shall ensure that client records in electronic form are stored securely and a backup copy is maintained.

G. The provisions of this Section apply to all licensees including those on inactive status.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**§ R4-26-413. Change of Name, Mailing Address, E-mail Address,  
or Telephone Number**

A. The Board shall communicate with a licensee using the contact information provided to the Board. To ensure timely communication from the Board, a licensee shall notify the Board, in writing, within 30 days of any change of name, mailing address, e-mail address, or residential or business telephone number.

B. A licensee who reports a name change shall submit to the Board legal documentation that explains the name change.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**§ R4-26-414. Complaints and Investigations**

A. Anyone, including the Board, may file a complaint. A complainant shall ensure that a complaint filed with the Board involves:

1. An individual licensed under this Article; or
2. An individual, including an applicant, believed to be engaged in the unlicensed practice of behavior analysis.

B. Complaint requirements. A complainant shall:

1. Submit the complaint to the Board in writing; and
2. Provide the following information:
  - a. Name and business address of licensee or other individual who is the subject of complaint;
  - b. Name and address of complainant;
  - c. Allegations constituting unprofessional conduct;
  - d. Details of the complaint with pertinent dates and activities;
  - e. Whether the complainant has contacted any other organization regarding the complaint; and
  - f. Whether the complainant has contacted the licensee or other individual concerning the complaint and if so, the response, if any.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017.

**§ R4-26-415. Informal Interview**

A. As authorized by A.R.S. §32-2091.09, the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal interview.

B. The Board shall ensure that the written notice of informal interview contains the following information:

1. The time, date, and place of the informal interview;
2. An explanation of the informal nature of the proceedings;
3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona or without legal counsel;
4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal interview;
6. The licensee's right, as specified in A.R.S. §32-3206, to request a copy of information the Board will consider in making its determination; and
7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;

C. The Board shall ensure that an informal interview proceeds as follows:

1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
2. Introduction of the Board members, staff, and Assistant Attorney General present;
3. Swearing in of the respondent, complainant, and witnesses;
4. Brief summary of the allegations and purpose of the informal interview;
5. Optional opening comment by the respondent and complainant;
6. Questioning of the respondent and witnesses by the Board;

7. Questioning of the complainant by the respondent through the Chair;
8. Optional additional comments by the respondent and complainant; and
9. Deliberation by the Board.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 26 A.A.R. 1017, effective 7/4/2020.

**§ R4-26-416. Rehearing or Review of Decision**

A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.

B. Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, or an administrative law judge;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive or insufficient penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
7. The findings of fact or a decision is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

F. Within 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the

motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.

G. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.

H. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.

I. An application for judicial review of any final Board decision may be made under A.R.S. §12-901 et seq.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**§ R4-26-417. Licensing Time Frames**

A. For the purpose of A.R.S. §41-1073, the Board establishes the following time frames:

1. Initial license.

a. Overall time frame: 120 days,

b. Administrative completeness review time frame: 30 days, and

c. Substantive review time frame: 90 days;

2. Renewal license.

a. Overall time frame: 150 days,

b. Administrative completeness review time frame: 60 days, and

c. Substantive review time frame: 90 days; and

3. Initial registration as an out-of-state health care provider of telehealth services.

a. Overall time frame: 120 days,

b. Administrative completeness review time frame: 30 days, and

c. Substantive review time frame: 90 days.

B. An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time frames by no more than 25% of the overall time frame.

C. The administrative completeness review time frame begins when the Board receives the application materials required under R4-26-403, R4-26-408(C) and (D), or as prescribed under A.R.S. §36-3606. During the administrative completeness review time frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.

D. An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.

E. Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time frame listed in subsection (A)(1)(b) or (A)(2)(b).

F. The substantive review time frame begins on the date of the Board's notice of administrative completeness.

G. If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.

H. An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time frames are suspended from the date of the Board's request until the Board receives the additional information.

I. An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.

J. Within the overall time frame listed in subsection (A), the Board shall:

1. Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article; or
2. Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.

K. If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. §32-2091.07(A).

L. If the Board denies a license, the Board shall send the applicant a written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;

3. The time for appealing the denial; and
  4. The applicant's right to request an informal settlement conference.
- M. If a time frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time frame's last day.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 23 A.A.R. 215, effective 3/5/2017. Amended by final exempt rulemaking at 27 A.A.R. 1272, effective 9/1/2021.

**§ R4-26-418. Mandatory Reporting Requirement**

A. As required by A.R.S. §32-3208, an applicant or licensee who is charged with a misdemeanor involving conduct that may affect client safety or a felony shall provide written notice of the charge to the Board within 10 days after the charge is filed.

B. A list of reportable misdemeanors is available on the Board's website.

**History:**

Section made by final rulemaking at 18 A.A.R. 2490, effective September 11, 2012 (Supp. 12-3).

**§ 32-2063. Powers and duties**

A. The board shall:

1. Administer and enforce this chapter and board rules.
2. Regulate disciplinary actions, the granting, denial, revocation, renewal and suspension of licenses and the rehabilitation of licensees pursuant to this chapter and board rules.
3. Prescribe the forms, content and manner of application for licensure and renewal of licensure and set deadlines for the receipt of materials required by the board.
4. Keep a record of all licensees, board actions taken on all applicants and licensees and the receipt and disbursal of monies.
5. Adopt an official seal for attesting licenses and other official papers and documents.
6. Investigate charges of violations of this chapter and board rules and orders.
7. Subject to title 41, chapter 4, article 4, employ an executive director who serves at the pleasure of the board.
8. Annually elect from among its membership a chairman, a vice chairman and a secretary, who serve at the pleasure of the board.
9. Adopt rules pursuant to title 41, chapter 6 to carry out this chapter and to define unprofessional conduct.
10. Engage in a full exchange of information with other regulatory boards and psychological associations, national psychology organizations and the Arizona psychological association and its components.
11. By rule, adopt a code of ethics relating to the practice of psychology. The board shall base this code on the code of ethics adopted and published by the American psychological association. The board shall apply the code to all board enforcement policies and disciplinary case evaluations and development of licensing examinations.
12. Adopt rules regarding the use of telepractice .
13. Before the board takes action, receive and consider recommendations from the committee on behavior analysts on all matters relating to licensing and regulating behavior analysts, as well as regulatory changes pertaining to

the practice of behavior analysis, except in the case of a summary suspension of a license pursuant to section 32-2091.09, subsection E.

14. Beginning January 1, 2022, require each applicant for an initial or temporary license or a license renewal pursuant to this chapter to have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial is based does not alone disqualify the applicant from licensure.

B. Subject to title 41, chapter 4, article 4, the board may employ personnel it deems necessary to carry out this chapter. The board, in investigating violations of this chapter, may employ investigators who may be psychologists. The board or its executive director may take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses and the production of books, papers, records, documents and other information relating to the investigation or hearing.

C. Subject to section 35-149, the board may accept, expend and account for gifts, grants, devises and other contributions, monies or property from any public or private source, including the federal government. The board shall deposit, pursuant to sections 35-146 and 35-147, monies received pursuant to this subsection in special funds for the purpose specified, and monies in these funds are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Compensation for all personnel shall be determined pursuant to section 38-611.

**History:**

Amended by L. 2021, ch. 210,s. 1, eff. 9/29/2021. Amended by L. 2017, ch. 273,s. 3, eff. 11/1/2017. Amended by L. 2014, ch. 258,s. 2, eff. 7/24/2014. L12, ch 321, sec 62.

**§ 32-2091. Definitions**

In this article, unless the context otherwise requires:

1. "Active license" means a current license issued by the board to a person licensed pursuant to this article.
2. "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.
3. "Behavior analysis" means the design, implementation and evaluation of systematic environmental modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.
4. "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.
5. "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.
6. "Client" means:
  - (a) A person or entity that receives behavior analysis services.
  - (b) A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.
  - (c) An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.
7. "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.

8. "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.
9. "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.
10. "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the license.
11. "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.
12. "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:
- (a) Obtaining a fee by fraud or misrepresentation.
  - (b) Betraying professional confidences.
  - (c) Making or using statements of a character tending to deceive or mislead.
  - (d) Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.
  - (e) Gross negligence in the practice of a behavior analyst.
  - (f) Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.
  - (g) Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.
  - (h) Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.
  - (i) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a

court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j) Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k) Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.

(l) Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.

(m) Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.

(n) Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.

(o) Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.

(p) Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.

(q) Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.

(r) Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.

(s) Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(t) Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior

analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.

(u) Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.

(v) Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.

(w) Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.

(x) Engaging in false, deceptive or misleading advertising.

(y) Exploiting a client, student or supervisee.

(z) Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.

(aa) Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.

(bb) Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.

(cc) Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.

(dd) Violating an ethical standard adopted by the board.

(ee) Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

**§ 32-2091.01. Fees**

A. The board, by a formal vote, shall establish fees for the following relating to the licensure of behavior analysts:

1. An application for an active license.
2. An application for a temporary license.
3. Renewal of an active license.
4. Issuance of an initial license.

B. The board may charge additional fees for services it deems necessary and appropriate to carry out this article. These fees shall not exceed the actual cost of providing the service.

C. The board shall not refund fees except as otherwise provided in this article. On special request and for good cause, the board may return the license renewal fee.

**§ 32-2091.02. Qualifications of applicant**

A person who wishes to practice as a behavior analyst must be licensed pursuant to this article. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.
2. Be at least twenty-one years of age.
3. Pay all applicable fees prescribed by the board.
4. Have the physical and mental capability to safely and competently engage in the practice of behavior analysis.
5. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this article.
6. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
7. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
8. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.

9. Beginning January 1, 2022, have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

**History:**

Amended by L. 2022, ch. 59,s. 75, eff. 9/23/2022. Amended by L. 2021, ch. 210,s. 7, eff. 9/29/2021.

**§ 32-2091.03. Educational and training standards for licensure**

A. An applicant for licensure as a behavior analyst must meet standards adopted by the state board of psychologist examiners, including meeting graduate-level education and supervised experience requirements and passing a national examination. The state board of psychologist examiners shall adopt standards consistent with the standards set by a nationally recognized behavior analyst certification board, except that:

1. The number of hours required for supervised experience must be at least one thousand five hundred hours of supervised work experience .
2. If the experience was obtained in a state that licensed behavior analysts at the time of the supervised work experience, the supervisor must be licensed in the state where the behavior analysis trainee services were provided.

B. The standards adopted for supervised experience must also be consistent with the standards set by a nationally recognized behavior analyst certification board. If the state board of psychologist examiners does not agree with a standard set by a nationally recognized behavior analyst certification board, the state board may adopt an alternate standard.

**History:**

Amended by L. 2021, ch. 210,s. 8, eff. 9/29/2021. Amended by L. 2014, ch. 166,s. 1, eff. 7/24/2014.

**§ 32-2091.04. Reciprocity**

The board may issue a license to a person as a behavior analyst if the person is licensed or certified by a regulatory agency of another state that imposes requirements that are substantially equivalent to those imposed by this article at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.
2. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.
3. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.
4. Meets any other requirements prescribed by the board by rule.

**History:**

Amended by L. 2022, ch. 59,s. 76, eff. 9/23/2022.

**§ 32-2091.06. Temporary licenses; inactive status; reinstatement to active status**

A. If the board requires an additional examination, it may issue a temporary license to a behavior analyst who is licensed or certified under the laws of another jurisdiction if the behavior analyst applies to the board for licensure and meets the educational, experience and first examination requirements of this article.

B. A temporary license issued pursuant to this section is effective from the date the application is approved until the last day of the month in which the applicant receives the results of the additional examination.

C. The board shall not extend, renew or reissue a temporary license or allow it to continue in effect beyond the period authorized by this section.

D. The board's denial of an application for licensure terminates a temporary license.

E. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a behavior analyst due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A behavior analyst who is retired is exempt from paying the renewal fee. A behavior analyst may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the behavior analyst will not practice as a behavior analyst in this state for the duration of the voluntary inactive status and by paying the required fee as prescribed by the board by rule.

F. A behavior analyst who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee as prescribed by the board by rule. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A behavior analyst who is on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a behavior analyst.

**ARS 32-2091.06 Temporary licenses; inactive status;  
reinstatement to active status (Arizona Revised Statutes (2022  
Edition))**

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G. A behavior analyst on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this article and whether the person has maintained and updated the person's professional knowledge and capability to practice as a behavior analyst. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

H. Beginning January 1, 2022, an applicant for a temporary license pursuant to this section shall have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

**History:**

Amended by L. 2021, ch. 210, s. 9, eff. 9/29/2021.

**§ 32-2091.07. Active license; issuance; renewal; expiration;  
continuing education**

A. If the applicant satisfies all of the requirements for licensure pursuant to this article, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until the last day of the birth month of the applicant of the next odd-numbered year or even-numbered year pursuant to subsection B, paragraph 1 or 2 of this section.

B. A person holding an active or inactive license shall apply to renew the license on or before the last day of the birth month of the licensee every other year as follows:

1. In each odd-numbered year, if the licensee holds an odd-numbered license.

2. In each even-numbered year, if the licensee holds an even-numbered license.

C. The application shall include any applicable renewal fee as prescribed by the board by rule. Except as provided in section 32-4301 or 41-1092.11, a license expires if the licensee fails to renew the license on or before the last day of the licensee's birth month of the licensee's renewal year pursuant to subsection B of this section. A licensee may reinstate an expired license by paying a reinstatement fee as prescribed by the board by rule within two months after the last day of the licensee's birth month of that year. Beginning two months after the last day of the licensee's birth month during the licensee's renewal year until the last day of the licensee's birth month the following year, a licensee may reinstate the license by paying a reinstatement fee as prescribed by the board by rule and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated within a year after the last day of the licensee's birth month of the licensee's renewal year may reapply for licensure as prescribed by this article. A notice to renew is fully effective by mailing or electronically providing the notice to the licensee's last known address of record or last known email address of record in the board's file. Notice is complete at the time of deposit in the mail or when the email is sent.

D. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national behavior analysis ethics committee or health care institution. The report shall include the name and address of

the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.

E. A person who renews an active license to practice behavior analysis in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of behavior analysis in the amount and during the period the board prescribes. The board shall prescribe documentation requirements.

F. A person who applies for an initial RENEWAL of a license pursuant to this section on or after January 1, 2022 shall possess or have applied for a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

**History:**

Amended by L. 2021, ch. 210,s. 10, eff. 9/29/2021. Amended by L. 2014, ch. 166,s. 4, eff. 4/30/2017.

**§ 32-2091.09. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty**

A. The board on its own motion may investigate evidence that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. A health care institution shall, and any other person may, report to the board information that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. The board shall notify the licensee about whom information has been received as to the content of the information within one hundred twenty days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

B. A health care institution shall inform the board if the privileges of a licensee to practice in that institution are denied, revoked, suspended or limited because of actions by the licensee that appear to show that the person is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a licensee under investigation resigns the licensee's privileges or if a licensee resigns in lieu of disciplinary action by the health care institution. Notification must include a general statement of the reasons for the resignation.

C. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.

D. Except as provided in subsection E of this section, the committee on behavior analysts shall review all complaints against behavior analysts and, based on the information provided pursuant to subsection A or B of this section, shall submit its recommendations to the full board.

E. If the board finds, based on the information it receives under subsection A or B of this section, that the public health, safety or welfare requires

**ARS 32-2091.09 Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty (Arizona Revised Statutes (2022 Edition))**

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emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, the board shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days. The board shall notify the committee on behavior analysts of any action taken pursuant to this subsection.

F. If the board finds that the information provided pursuant to subsection A or B of this section is not of sufficient seriousness to merit direct action against the licensee, the board may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

G. If the board believes the information provided pursuant to subsection A or B of this section is or may be true, the board may request an informal interview with the licensee. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, the board shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, the board may take any of the following actions:

1. Dismiss if the board believes the information is without merit.
2. File a letter of concern.
3. Issue a decree of censure.
4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Probation may include temporary suspension for not more than twelve months, restriction of the license or restitution of fees to a client resulting from violations of this article. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.

**ARS 32-2091.09 Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty (Arizona Revised Statutes (2022 Edition))**

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5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavior analysis.

6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

H. If the board finds that the information provided pursuant to subsection A or B of this section warrants suspension or revocation of a license, the board shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.

I. The board may impose a civil penalty of at least \$300 but not more than \$3,000 for each violation of this article or a rule adopted under this article. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.

J. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of behavior analysis or is incompetent as a behavior analyst, the board may do any of the following in any combination and for any period of time it determines necessary:

1. Suspend or revoke the license.
2. Censure the licensee.
3. Place the licensee on probation.

K. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.

L. A letter of concern is a public document and may be used in future disciplinary actions against a licensee. A decree of censure is an official action against the behavior analyst's license and may include a requirement that the licensee return fees to a client.

**ARS 32-2091.09 Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty (Arizona Revised Statutes (2022 Edition))**

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M. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.

N. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of behavior analysis services, it shall inform the appropriate criminal justice agency.

**History:**

Amended by L. 2021, ch. 210, s. 11, eff. 9/29/2021. Amended by L. 2017, ch. 273, s. 5, eff. 11/1/2017.

**§ 32-2091.13. Confidential communications**

A. The confidential relations and communications between a client and a person who is licensed pursuant to this article, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client waives the behavior analyst-client privilege in writing or in court testimony, a behavior analyst shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavior analyst's practice. The behavior analyst shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The behavior analyst-client privilege does not extend to cases in which the behavior analyst has a duty to report information as required by law.

B. The behavior analyst shall ensure that client records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the behavior analyst.

**§ 41-1073. Time frames; exception**

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

**§ 41-1092.09. [Repealed Effective 1/1/2028] Rehearing or review**

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

**History:**

For repeal eff. 1/1/2028, see 41-3027.05.

**F**

CONSIDERATION AND DISCUSSION OF ARIZONA MEDICAL BOARD'S 4 A.A.C. 16, ARTICLE 2 1YRR THAT WAS TABLED FOR DISCUSSION AT THE NOVEMBER 1, 2022 COUNCIL MEETING



## **Telemedicine Policies**

### *Board by Board Overview*

#### **Document summary:**

##### Licensure

- Forty-nine (49) state boards, plus the medical boards of District of Columbia, Puerto Rico, and the Virgin Islands, require that physicians engaging in telemedicine are licensed in the state in which the patient is located.
- Ten (10) states issue a special purpose license, telemedicine license or certificate to practice telemedicine across state lines.
- Seven (8) states require physicians to register or receive a waiver if they wish to practice across state lines.
- Five (5) states offer reciprocal, regional or extraterritorial licenses for interstate practice.
- Two (2) states allows for consultative services to be rendered across state lines.

##### Reimbursement - Medicaid

- All states and the District of Columbia provide reimbursement for some form of live video in Medicaid fee-for-service.
- Twenty-five (25) states reimburse for store-and-forward.
- Thirty-four (34) states reimburse for remote patient monitoring.
- Thirty-four (34) states reimburse for audio-only.
- Seventeen (17) states reimburse for all three, with certain limitations.

##### Reimbursement – Private Payer

- Forty-three (43) states and the District of Columbia govern private payer telehealth reimbursement policies.
- Twenty-four (24) states have private payer parity laws.

	State License Required	Reimbursement Policies				Private Payer Law	Other Rules/Regulations (citation only)
		Medicaid					
		Live Video	Store-and-Forward	Remote Patient Monitoring	Audio-only		
AL	√	√		√			<a href="#">Ala. Admin. Code § 540-x-16</a> <a href="#">ALBME Special Purpose License</a> (Abolished 5/26/22) <a href="#">AL Medicaid Management Information System Provider Manual, Primary Care Physician</a>
AK	√* <sup>1, 2</sup>	√	√	√	√	√	<a href="#">“Telehealth Statutes, Regulations &amp; Policy”</a> <a href="#">Alaska Dept. of Health and Social Services SB 74 of 2016, Chapter 25 SLA 16</a> <a href="#">“Board Issued Guidelines: Telemedicine”, AMB, Nov. 2014</a> <a href="#">Alaska Courtesy License</a> <a href="#">AK HB 265 (2022) re: out-of-state referrals</a>
AZ-M	√+ <sup>3</sup>	√	√	√	√	√ <sup>4</sup>	<a href="#">Ariz. Rev. Stat. § 32-1421</a> <a href="#">“Issue Brief: Telemedicine” Arizona State Senate, Nov. 2014</a> <a href="#">AZ HB 2454 (2021)</a>
AZ-O	√+	√	√	√	√	√ <sup>4</sup>	<a href="#">Ariz. Rev. Stat. § 32-1821</a> <a href="#">Ariz. Rev. Stat. § 32-1854</a> <a href="#">“Issue Brief: Telemedicine” Arizona State Senate, Nov. 2014</a> <a href="#">AZ HB 2454 (2021)</a>
AR	√	√		√	√	√	<a href="#">AR Code § 17-95-206</a> <a href="#">AR Stat. 10-3-1702(10)</a> <a href="#">“When Does Telemedicine or Internet- Based Patient Healthcare Violate Regulation 2.8?”</a> <a href="#">AR State Med. Board Newsletter Fall 2012</a>

<sup>1</sup> √\* denotes that a state may issue a special purpose license, telemedicine license or certificate practice telemedicine across state lines.

<sup>2</sup> In addition, Alaska allows individuals with suspected or diagnosed life-threatening conditions, to be treated by an out-of-state physician *as long as they have a referral from their Alaska-licensed physician.*

<sup>3</sup> √+ denotes that a state requires physicians to register if they choose to practice medicine across state lines.

<sup>4</sup> √<sup>4</sup> denotes that a state has payment parity.

	State License Required	Reimbursement Policies				Private Payer Law	Other Rules/Regulations (citation only)
		Medicaid					
		Live Video	Store-and-Forward	Remote Patient Monitoring	Audio-only		
CA-M	√	√	√	√**5	√	√^	<a href="#">Ca. Business &amp; Prof. Code § 2290.5</a> <a href="#">Medical Board of California</a>
CA-O	√	√	√	√**	√	√^	<a href="#">Same as CA-M</a>
CO	√	√		√	√	√	<a href="#">Colo. Rev. Stat. § 12-36-106(1)(g)</a> <a href="#">“40-27: Guidelines for the Appropriate Use of Telehealth Technologies in the Practice of Medicine” Colorado Medical Board, Aug. 2015</a>
CT	√	√			√	√^	<a href="#">Public Act 15-88, Effective 10/1/15</a> <a href="#">CT Gen. Stat. § 17b-245c</a>
DE	√+	√				√^	<a href="#">18 Del. C § 3370</a> <a href="#">24 Del. C § 1702</a> <a href="#">24 Del. C § 1769D</a> <a href="#">DE HB 334 (2022)</a>
DC	√	√			√	√	<a href="#">DC Municipal Regulations § 4618</a>
FL-M	√+	√				√	<a href="#">Fla. Stat. § 2019-137</a> <a href="#">Fla. Admin. Code § 64B8-9.0141</a>
FL-O	√+	√				√	<a href="#">Fla. Stat. § 2019-137</a> <a href="#">Fla. Admin. Code § 64B15-14.0081</a>
GA	√*	√	√			√^	<a href="#">Ga. Code § 360-3.07</a> <a href="#">O.C.G.A. § 43-34-31</a> <a href="#">Ga. Comp. R. &amp; Regs. 360-3-.07</a> <a href="#">Ga. Code § 43-34-31.1</a>
GU	# <sup>6</sup>						<a href="#">10 GCA § 12202(b)</a>
HI	√	√	√	√**		√^	<a href="#">Haw. Rev. Stat. § 453-1.3</a>

<sup>5</sup> √\*\* denotes that the state reimburses store-and-forward or remote patient monitoring as a part of Communications Technology Based Services (CTBS), which limits reimbursement codes and amounts.

<sup>6</sup> Guam Code, 10 GCA § 12202(b), requires only that physicians are licensed somewhere within the United States.

	State License Required	Reimbursement Policies				Private Payer Law	Other Rules/Regulations (citation only)
		Medicaid					
		Live Video	Store-and-Forward	Remote Patient Monitoring	Audio-only		
ID	√	√			√		<a href="#">Idaho Code Ann. § 54-5601</a> <a href="#">IDAPA 24.33.03</a>
IL	√	√		√	√	√^	<a href="#">225 ILCS 60/49.5</a>
IN	√+	√		√	√	√	<a href="#">Ind. Code 25-1-9.5</a> <a href="#">Ind. Code 25-22.5-14</a> <a href="#">Ind. Code 12-15-5-11</a> <a href="#">844 IAC 5-8</a>
IA	√	√	√		√	√^	<a href="#">IAC 653 – 13.11</a>
KS	√+	√		√		√	<a href="#">KS Statute Sec. 65-28,135</a> <a href="#">KS HB 2208 (2021)</a>
KY	√	√	√	√	√	√^	<a href="#">Ky. Rev. Stat. § 311.550(17)</a> <a href="#">Ky. Rev. Stat. § 311.5975</a> <a href="#">“Policy: Telemedicine Statement” KBML, Sept.1997</a> <a href="#">“Board Opinion regarding the use of Telemedicine Technologies in the Practice of Medicine” KBML, June 2014, amended Sept. 2022</a>
LA	√*	√		√	√	√^	<a href="#">La. Rev. Stat. § 37.1276.1</a> <a href="#">La. Rev. Stat. § 37:1271</a> <a href="#">La. Rev. Stat. § 40:1223.3</a> <a href="#">La. Admin. Code 46:XLV.408</a> <a href="#">“Advisory opinion: The use of telemedicine technologies with established patient” LSBME, March, 2014</a> <a href="#">LA Rev. Stat. § 37:1276.1</a>
ME-M	√‡ <sup>7</sup>	√	√	√	√	√	<a href="#">32 MRSA § 3300-D “Guidelines: Telemedicine” MBLM, Sept. 2014</a>

<sup>7</sup> √‡ denotes that a state allows for consultative services to be rendered across state lines

	State License Required	Reimbursement Policies				Private Payer Law	Other Rules/Regulations (citation only)
		Medicaid					
		Live Video	Store-and-Forward	Remote Patient Monitoring	Audio-only		
							<a href="#">“Policy: Medical Practice Across State Lines” Northeast Region State Medical Boards, Sept. 1999</a> <a href="#">“Advisory Ruling: Telemedicine – Radiology” Maine Board of Licensure in Medicine, May 1994</a> <a href="#">“Advisory Ruling: Telemedicine – Psychotherapy” Maine Board of Licensure in Medicine, August 1993</a>
ME-O	√‡	√	√	√	√	<a href="#">“Policy: Medical Practice Across State Lines” Northeast Region State Medical Boards, Sept. 1999</a>	
MD	√	√	√	√	√^	<a href="#">MD Dept. of Health and Mental Hygiene MD Health Occ Code § 14-302</a>	
MA	√	√	√	√**	√^	<a href="#">243 CMR 2.01(4)</a>	
MI-M	√	√	√	√	√	<a href="#">MCL 333.16283 et. seq.</a>	
MI-O	√	√	√	√	√	<a href="#">See MI-M</a>	
MN	√+	√	√	√	√^	<a href="#">Minn. Stat. § 147.032 “Telemedicine Registration” Telemedicine Registration Application</a> <a href="#">Telemedicine Laws in Minnesota, MN House Research, July 2020</a>	
MS	√	√		√	√	<a href="#">MS Code Ann. § 73-25-34</a> <a href="#">MS Admin Code title 30, part 2635, Ch. 5</a>	
MO	√	√	√	√	√	<a href="#">Mo. Rev. Stat. § 191.1145(6)</a> <a href="#">Mo. Rev. Stat. § 191.1146</a> <a href="#">Mo. Rev. Stat. § 334.010</a> <a href="#">Mo. Rev. Stat. § 334.108</a>	
MT	√	√			√	<a href="#">MT Code Ann. § 37-3-102</a> <a href="#">MT Code Ann. § 37-3-343</a> <a href="#">Montana Admin. Code 24:156:8</a>	
NE	√	√		√	√^	<a href="#">Neb. Rev. Stat. § 71-8501 et seq.</a>	

	State License Required	Reimbursement Policies				Private Payer Law	Other Rules/Regulations (citation only)
		Medicaid					
		Live Video	Store-and-Forward	Remote Patient Monitoring	Audio-only		
NV-M	√*	√	√		√	√^	<a href="#">NRS 630.261(e)</a>
NV-O	√*	√	√		√	√^	<a href="#">NRS 633.165</a> <a href="#">NRS 630.261</a>
NH	√	√			√	√	<a href="#">NH Rev. Stat. § 329:1-d NH Rev. Stat. § 415-J</a> <a href="#">“Guidelines for Physician Internet and Prescribing”</a> <a href="#">NHBOM, April 2004</a> <a href="#">“Policy: Medical Practice Across State Lines”</a> <a href="#">Northeast Region State Medical Boards, Sept. 1999</a>
NJ	√	√				√	<a href="#">NJ Statute C.45:1-62(2)(b)</a>
NM	√*	√	√		√	√^	<a href="#">NM Admin. Code 16.10.2 et seq.</a> <a href="#">NM SB 279 (2021)</a>
NY	√	√	√	√	√	√^	<a href="#">Telemedicine Statutes of New York</a> <a href="#">“Statements on Telemedicine” NY PMC</a> <a href="#">“Policy: Medical Practice Across State Lines”</a> <a href="#">Northeast Region State Medical Boards, Sept. 1999</a>
NC	√	√	√**	√	√		<a href="#">“Position Statement: Telemedicine” NCMB, Nov. 2014</a>
ND	√	√		√	√	√	<a href="#">N.D. Cent. Code § 54-52.1-04.13</a> <a href="#">“Statement on Telemedicine Policy” NDBME, March 2014</a> <a href="#">N.D. Cent. Code § 43-17</a>
OH	√	√	√**	√	√	√	<a href="#">O. R. C. § 4743.09</a>
OK-M	√	√		√		√^	<a href="#">Okla. Stat. § 36-6801 et seq.</a> <a href="#">Oklahoma Admin. Code § 435</a> <a href="#">Amendments to OAC § 435, May 2016</a> <a href="#">“Adopted Telemedicine Policy (Mental Health)”</a> <a href="#">OMB, Sept. 18, 2008</a> <a href="#">“Definition of Face-to-Face Encounter by Telemedicine in Oklahoma” OMB, Sept. 25, 2013</a>

	State License Required	Reimbursement Policies				Private Payer Law	Other Rules/Regulations (citation only)
		Medicaid					
		Live Video	Store-and-Forward	Remote Patient Monitoring	Audio-only		
OK-O	√*	√		√		√^	<a href="#">“Licensure” Okla. Stat. §59-633</a> <a href="#">“Guidelines on Telemedicine,” OKBOE OK Stat., Tit. 59, § 633</a>
OR	√*	√	√	√	√	√^	<a href="#">Or. Rev. Stat. § 677.139</a> <a href="#">Or. Rev. Stat. § 743A.058</a> <a href="#">Or. Admin. Code 410-130-0610</a> <a href="#">“Telemedicine” OMB, originally pub. January 2012</a>
PA-M	√† <sup>8</sup>	√			√		<a href="#">Pa. Code § 17.4</a> <a href="#">PA Stat. tit. 63, § 422.34</a>
PA-O	√†	√			√		<a href="#">Pa. Code § 25.243</a> <a href="#">PA Stat. tit. 63, § 422.34</a>
PR	√						<a href="#">20 LPRA § 6001 et seq.</a>
RI	√	√				√^	<a href="#">RI Gen Laws § 5-37-12</a> <a href="#">“Guidelines for Appropriate Use of Telemedicine and Internet in Medical Practice,” RI BMLD</a>
SC	√	√		√	√		<a href="#">S.C. Code Ann. 40-47-37</a> <a href="#">“Telemedicine Advisory Opinion” SCBME, Aug. 2015</a> <a href="#">“Establishment of Physician-Patient Relationship as Prerequisite to Prescribing Drugs” SCBME, Aug. 2015</a>
SD	√	√	√		√	√	<a href="#">SD Codified Laws § 36-4-41</a> <a href="#">SD Codified Laws § 36-2-9</a> <a href="#">SD Admin. Rules 20:78:03:12</a>

<sup>8</sup> √† denotes that a state offers extraterritorial licenses to practice across state lines

	State License Required	Reimbursement Policies				Private Payer Law	Other Rules/Regulations (citation only)
		Medicaid					
		Live Video	Store-and-Forward	Remote Patient Monitoring	Audio-only		
TN-M	√	√			√	<a href="#">Tenn. Code Ann. § 63-1-155</a> <a href="#">Tenn. Code Ann. § 63-6-201</a> <a href="#">Tenn. Comp. R. &amp; Regs. 0880-02.16</a> <a href="#">“Policy Statement: Practicing Medicine on patients within Boundaries of Tennessee by Physicians in other states”</a> <a href="#">TNBME, Oct. 1994</a>	
TN-O	√*	√			√	<a href="#">Tenn. Comp. R. &amp; Regs. 1050-02.17</a>	
TX	√*	√	√	√	√	<a href="#">TX Admin. Code, Tit. 22, § 172.12</a> <a href="#">“Out-of-State Telemedicine License,” TMB</a>	
UT-M	√ (+ pro bono interstate telemedicine)	√		√	√^	<a href="#">UT Code Ann. § 58-67-305(7)</a> <a href="#">Utah Code § 58-1-307</a>	
UT-O	√ (Same as UT-M)	√		√	√^	<a href="#">Same as UT-M</a>	
VT-M	√+,* <sup>9</sup>	√	√	√	√^	<a href="#">“Policy: Medical Practice Across State Lines”</a> <a href="#">Northeast Region State Medical Boards, Sept. 1999</a> <a href="#">VT SOS Guidance: Telehealth, Out-of-State &amp; Expired License Registration</a>	
VT-O	√+,* <sup>10</sup>	√	√	√	√^	<a href="#">Same as VT-M</a>	

<sup>9</sup> Beginning on July 1, 2023, a health care professional who is not otherwise licensed, certified, or registered to practice in Vermont may obtain a Telehealth Registration to provide health care services in Vermont via telehealth to a total of not more than 10 unique patients or clients for a period of not more than 120 consecutive days from the date the Telehealth Registration was issued. OR practitioners may obtain a Telehealth License to provide healthcare services in Vermont via telehealth to a total of not more than 20 unique patients or clients located in Vermont during the two-year license term.

<sup>10</sup> Interim Telehealth Registrations are available from April 1, 2022, through June 30, 2023 for osteopathic physicians only. These Interim Telehealth Registrations expire on June 30, 2023. Osteopaths who are licensed in good standing in another state and wish to provide healthcare in Vermont via telehealth after June 30, 2023, will be required to obtain a Telehealth Registration or Telehealth License.

	State License Required	Reimbursement Policies				Private Payer Law	Other Rules/Regulations (citation only)
		Medicaid					
		Live Video	Store-and-Forward	Remote Patient Monitoring	Audio-only		
VI	√						<a href="#">VI St. T. 27 § 16</a>
VA	√	√	√	√	√	√	<a href="#">Va. Code § 38.2-3418.16</a> <a href="#">“Guidance Document 85-21”</a> <a href="#">Virginia Board of Medicine, Feb. 2015</a>
WA-M	√‡	√	√	√	√	√^	<a href="#">RCW 18.71.030 WAC 182-531-1730</a> <a href="#">“Guideline: Appropriate Use of Telemedicine”</a> <a href="#">Medical Quality Assurance Commission, Oct. 2014</a> <a href="#">WA SSB 5423 (2021)   SSB 5423 Bill Summary</a>
WA-O	√‡	√	√	√	√	√^	<a href="#">RCW 18.57.040</a>
WV-M	√+	√	√	√***		√^	<a href="#">W Va. Code § 30-3-13</a> <a href="#">“Position Statement on Telemedicine”</a> <a href="#">West Virginia Board of Medicine, Nov. 2014</a> <a href="#">WV HB 2024 (2021)</a>
WV-O	√+	√	√	√***		√^	<a href="#">W. Va. Code §30-14-12d “Telemedicine Policy”</a> <a href="#">WVBOM Medicine, Sept. 2015</a> <a href="#">WV HB 2024 (2021)</a>
WI	√	√		√	√		<a href="#">Wisconsin Admin. Code Med. §24</a>
WY	√	√					<a href="#">WY Board Rules § 1.4(e)</a>

*For informational purposes only: This document is not intended as a comprehensive statement of the law on this topic, nor to be relied upon as authoritative. Non-cited laws, regulation, and/or policy could impact analysis on a case-by-case or state-by-state basis. All information should be verified independently.*

*Questions, comments, or corrections? Please contact Andrew Smith ([asmith@fsmb.org](mailto:asmith@fsmb.org)).*

**G.**

CONSIDERATION AND DISCUSSION OF ARIZONA DEPARTMENT OF ADMINISTRATION'S  
INTENT TO EXPIRE TITLE 2, CHAPTER 15, ARTICLE 2 PURSUANT TO A.R.S. § 41-1052(M)

*Effective date: September 29, 2021*

**GOVERNOR'S REGULATORY REVIEW COUNCIL  
NOTICE OF INTENT TO EXPIRE RULES**

1. Agency name: Arizona Department of Administration
2. Title and its heading: Title 2, Administration
3. Chapter and its heading: Chapter 15, Department of Administration - General Services Division
5. Article and its heading: Article 2

Pursuant to A.R.S. § 41-1052(M), the Arizona Department of Administration provides to the Governor's Regulatory Review Council a Notice of its Intent to Expire the following rules: R2-15-201 through R2-15-209

Pursuant to A.R.S. § 41-1052(M), the Arizona Department of Administration seeks to expire the rules listed above for the following reasons: Laws 2021, First Regular Session, Chapter 413 (SB 1829) transferred ADOA's State Motor Vehicle Fleet to ADOT upon the general effective date of September 29, 2021.



9/28/2021 6:11 p.m.

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**[Agency Head or Designee]**

## H

CONSIDERATION AND DISCUSSION OF ARIZONA DEPARTMENT OF INSURANCE  
AND FINANCIAL INSTITUTION'S REQUEST TO RESCHEDULE FIVE-YEAR REVIEW  
FOR TITLE 4, CHAPTER 46 PURSUANT TO A.R.S. § 41-1056(H)



**Director's Office**  
**Arizona Department of Insurance and Financial Institutions**  
100 North 15<sup>th</sup> Avenue, Suite 261, Phoenix, AZ 85007-2624  
Phone: (602) 364-3100 | Web: <https://difi.az.gov>

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**Douglas A. Ducey, Governor**  
**Evan G. Daniels, Director**

September 28, 2022

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave., Suite 402  
Phoenix, AZ 85007

**RE:** Arizona Department of Insurance and Financial Institutions – Financial Institutions Division, Real Estate Appraisal - Five Year Review Report due September 2023  
Request to Reschedule

Dear Chairperson Sornsin:

The Arizona Department of Insurance and Financial Institutions ("DIFI") respectfully requests to reschedule the Five-Year Review for Title 4, Chapter 46 (Arizona Department of Insurance and Financial Institutions – Financial Institutions Division, Real Estate Appraisal) currently due by September 30, 2023.

Pursuant to Arizona Revised Statutes § 41-1056(H), the Chair may reschedule a report that is scheduled for review if the agency substantially revised the rule within two years before the due date of the report as scheduled by the Council.

In compliance with Arizona Administrative Code R1-6-302(A), DIFI submits the following information:

1. DIFI is requesting to reschedule the Five-Year Review for Title 4, Ch. 46, Articles 1 (General Provisions), 2 (Registration, Licensure, and Certification as an Appraiser), 3 (Complaint Investigations), 3.1 (Rules of Practice and Procedure before the Director), 4 (Appraisal Management Companies), 5 (Course Approval), and 6 (Property Tax Agents).
2. DIFI substantially revised the rules in this Chapter within two years of the due date of the Five-Year Review Report. The Five-Year Review Report is due September 30, 2023 and the Council approved the rulemaking on April 5, 2022.
  - a. DIFI substantially revised the entire Chapter 46.
    - i. The revisions consisted of replacing the title of "Superintendent" with "Director" and removing unnecessary references to the Superintendent throughout the Chapter; updating the title of the DIFI throughout the Chapter; revising the definition of "Disciplinary Action" to provide a clearer distinction between disciplinary and non-disciplinary actions; defining "Federally Regulated Appraisal Management Company" and "Property

Tax Agent;" lengthening licensing timeframes to be consistent with other license types within the division and DIFI; updating incorporation by reference materials; adding a requirement to submit biennial National registry fees; increasing the length of time for a supervisory appraiser to report the end of an engagement of a trainee appraiser to encourage compliance; removing inapplicable references to A.R.S. § 41-1080(A) (citizenship documentation); removing the requirement for an applicant to provide proof of credentialing in other states; eliminating the requirement to submit multiple fingerprint clearance cards if the DIFI has a valid card on file; increasing the time for an applicant to take and pass the qualifying exam from 30 to 90 days; adding reporting requirements for criminal convictions and civil judgments based on fraud, misrepresentation or deceit in the making of any appraisal and for owners of AMCs to report actions by a state regulator, or any professional or occupational credentialing authority; granting the Director expanded tools for reaching a settlement in a disciplinary matter; allowing for late-renewal of an AMC registration; clarifying qualifications for a course instructor; and expanding the timeframe for renewal of course approval.

- ii. DIFI believes these changes are substantial because they impact both the regulated community and the agency in significant ways. They are designed to reduce confusion and encourage compliance by the regulated entities who made no public comments when the rule was exposed for comment. They are also designed to bring Real Estate Appraisal more in line with the division and with DIFI as a whole and to eliminate any disparate provisions that are unnecessary while maintaining provisions that are necessary for Real Estate Appraisal to perform its regulatory functions.
- iii. The Council approved the Notice of Final Rulemaking on April 5, 2022. ([https://grrc.az.gov/sites/default/files/meeting-reports/4.5.2022%20Action%20Report\\_0.pdf](https://grrc.az.gov/sites/default/files/meeting-reports/4.5.2022%20Action%20Report_0.pdf))
- iv. The Secretary of State published the Notice of Final Rulemaking on May 6, 2022 with an effective date of June 11, 2022. (28 A.A.R. 893, May 6, 2022) ([https://apps.azsos.gov/public\\_services/register/2022/18/contents.pdf](https://apps.azsos.gov/public_services/register/2022/18/contents.pdf))

Thank you for your consideration of this request. If you have any questions or need further information, please contact Mary Kosinski at (602) 364-3476 or [mkosinski@azinsurance.gov](mailto:mkosinski@azinsurance.gov).

Sincerely,



Evan G. Daniels  
Director



Patricia Grant &lt;patricia.grant@azdoa.gov&gt;

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**Fwd: DES/DDD Article 9 Study for GRRC from District Central Independent Oversight Committee**

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Patricia Grant <patricia.grant@azdoa.gov>  
Draft

Mon, Nov 28, 2022 at 3:57 PM

----- Forwarded message -----

From: Linda Mecham &lt;lsmecham@yahoo.com&gt;

Date: Sun, Nov 27, 2022 at 11:00 PM

Subject: DES/DDD Article 9 Study for GRRC from District Central Independent Oversight Committee

To: [grrc@azdoa.gov](mailto:grrc@azdoa.gov) <[grrc@azdoa.gov](mailto:grrc@azdoa.gov)>

To Nicole Sornsin, Simon Larscheidt, and Members of the GRRC Committee:

By way of introduction, I am Linda Mecham, currently serving as DDD District Central IOC Chair. Our son, Mark, was served by DDD for 43 years, until his passing last year. I got involved with the IOC (then, the Human Rights Committee) because I had an issue with Mark's Day Program Provider. I presented our issue to the Committee, the Committee thought they could help, and then invited me to join. That was in 2002.

For nearly 40 years, Article 9 has been the guiding light for not only all things DDD in the state of Arizona, but also a template that many other states have followed to insure that these individuals with developmental disabilities/intellectual disabilities, are treated with respect and dignity, rather than the institutional model which was rampant with abuse and neglect, as well as physical and chemical restraints. As the years have passed, and as more information has become available regarding the many issues these individuals face in their daily lives, policy has been updated to reflect the needs, That has always worked because Article 9 is Principle based. Because Article 9 is a basic set of principles, that allow for change, through either additions or deletions to policy, to fit specific needs or

circumstances as they arise, changes in (or complete rewrites to) the original Article 9 are totally unnecessary because Article 9 establishes the parameters for the what can and cannot be done. Those basic parameters do not change in order for anyone to have a life of dignity and respect.

The path the IOCs have taken to get us to this point has been a rocky one. DDD told us that they did not think we were working with them in good faith. I was involved with the second rewrite. While serving on that committee, and because we were making changes to the "Attorney General" approved rewrite, I asked if this rewrite would need to go back to the Attorney General's office. I was told that it never went to the AG's office, whereas we were told previously that it was at the AG's office for their review. When I questioned that, I was told that DDD's internal stakeholders reviewed it. We were never told who the internal stakeholders were, or their expertise, either DDD or legal. I soon realized that not only were we working on Article 9, but we were also working on the policies to support the new Article 9. I felt that was presumptuous, as we didn't even have the Article 9 approved, and that if they were truly working within a time frame for completion from ADOA, how did they have time to write policy? (No answer to that question.) Upon completion of the second rewrite, which was several months ago, we continued to ask DDD how the Article 9 update was progressing. We were repeatedly told it was in progress. In our recent Statewide IOC meeting, we asked DDD Director Zane Garcia-Ramadan about the Article 9 update. He told us it had been sent to GRRC! We were stunned. In the "spirit of working together", and for all of the time we had invested in Article 9, we thought we were going to be able to review it before it went to GRRC. I don't know if DDD is required by law to put the second rewrite out for public comment, but given the negative comments from families, agencies, and providers, I thought that DDD should have done that. Article 9 affects everyone in the DDD community, and if so

many people are willing to take the time to send in comments, I would think that in "good faith", DDD would present the final document to the public. MANY changes needed to be made. Zane did tell us, after announcing that it had been sent to GRRC, that he would send us a copy of the final draft, which he did a few days later, and that he would also let us know when it was coming up for review by GRRC. I bookmarked GRRC in the Google search so that I could check on it myself...I didn't trust him to let us know.

Senator Barto suggested that I send our Annual Report to you so that you can have a glimpse into what we do, as well as an extensive review of both Article 9 and the Abuse and Neglect curriculum for the Members. We have been very involved in both of these in order to protect the members. The Article 9 report contains our comments and concerns for the original rewrite, and the Abuse and Neglect curriculum attachment also has our questions, DDD's non answers, and then our follow-up questions to them. The bottom line was that this inappropriate curriculum was presented to the DDD individuals in the Day Program setting (generally, and per policy) for a year, and then they would review it. The only data they collected was whether a DDD member took the curriculum. We have had many reports from parents regarding the inappropriate behavior that is new to their child/adult that was not being displayed prior the presentation of this curriculum.

I realize that the Abuse and Neglect curriculum is not the issue at hand. I included it in our annual report because it is something we have been heavily involved with for the past 15 months. I point it out to you as a illustration of how DDD has "listened" to us, but then continues to implement something that is clearly wrong for these DDD individuals. I fear that if the current version of Article 9 goes through, the doors are unlocked to returning AZ back to institutional homes for these precious

individuals who have potential for growth, for opportunity to experience life, and to be loved in a home environment, whether their natural homes or in a group setting with individuals who become their families. Article 9, as it currently exists, provides for that, and has for the past 40 years. It is the backbone of everything the IOCs do, everything we read, and everything we defend. It still works. I have likened it to my friends and colleagues..."Article 9 is like the Ten Commandments. They are old, but they are still relevant."

I look forward to being able to express some thoughts at Tuesday's meeting. I don't know how to sign on to do that, but would very much like to do so.

Thank you,  
Linda Mecham

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 **IOC Annual Report 2021-2022 Final.docx**

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# ARIZONA

## INDEPENDENT OVERSIGHT COMMITTEE

November 1, 2022

The Honorable Karen Fann  
President, Arizona State Senate  
1700 West Washington Street  
Phoenix, Arizona 85007

The Honorable Russell Bowers  
Speaker, Arizona House of Representatives  
1700 West Washington Street  
Phoenix, Arizona 85007

Dear President Fann and Speaker Bowers,

On behalf of the DDD Central Independent Oversight Committee, please find the 2021-22 Annual Report that outlines our committee's activities and recommendations. The report was prepared in accordance with the requirements of A.R.S. § 41-3804(H).

Thank you for your continued support of the committee volunteers that are protecting those in need.

Sincerely,  
Linda S. Mecham  
Chair

cc: Nancy K. Barto, Senate Health and Human Services Committee Chairman  
Jami Snyder, Director of Arizona Health Care Cost Containment System  
Mike Faust, Director of Arizona Department of Child Safety  
Don Herrington, Interim Director of Arizona Department of Health Services  
Michael Wisheart, Director of Arizona Department of Economic Security  
Joanne Osborne, House of Representatives Health and Human Services Committee

**Department of Economic Security  
Division of Developmental Disabilities**

***DISTRICT CENTRAL  
INDEPENDENT OVERSIGHT  
COMMITTEE***

***2021-2022 ANNUAL REPORT***

**DISTRICT CENTRAL  
Independent Oversight Committee  
Membership 2021-2022**

Linda Mecham, Chairperson, Family Member/Education/Advocate

Sherry Howard Wilhelmi, Vice-Chair, Family Member/Advocate

Tina Buetner, Parent/Advocate

Eva Hamant, Parent/Advocate

Mandy Harman, Member

Carol McNulty, Parent/Advocate

Andrea Potosky, Parent

Michael Sandefer, Parent/Special Education/Family Advisor

Debbie Stapley, Parent/Advocate

Carolyn Wilmer, Family Member/Health Care

Lisa Witt, School Psychologist/Family Member

Eduarda Yates, Parent/Advocate

The District Central Independent Oversight Committee reviews, by law, all incidents of abuse, neglect and human rights violations of the members who reside in Central Arizona. Revised Statute 41-3801 defines and explains the duties of the Independent Oversight Committees:

**A. The independent oversight committee on persons with developmental disabilities is established in the department of administration to promote the rights of clients who are receiving developmental disabilities services pursuant to title 36, chapter 5.1.**

**B. The committee shall be organized pursuant to this section and the requirements of section 41-3804.**

**C. The director of the department may establish additional committees for each district office established pursuant to section 41-1961 or to oversee the activities of any service provider.**

**D. Each independent oversight committee established pursuant to this section shall consist of at least seven and not more than fifteen members appointed by the director of the department with expertise in at least one of the following areas:**

- 1. Psychology.**
- 2. Law.**
- 3. Medicine.**
- 4. Education.**
- 5. Special education.**
- 6. Social work.**
- 7. Criminal justice.**

**E. Each independent oversight committee shall include at least two parents of children who receive services from the division of developmental disabilities.**

**F. The division of developmental disabilities shall provide to each independent oversight committee information regarding incidents of:**

- 1. Possible abuse or neglect or violations of rights.**
- 2. Physical abuse, sexual abuse and other abuse.**
- 3. Accidental injury.**
- 4. Missing clients.**
- 5. Behavioral emergency measures.**
- 6. Medication errors, including theft of medication or missing medication.**
- 7. Death.**
- 8. Suicide attempts.**
- 9. Hospitalizations.**
- 10. Incarcerations.**
- 11. Theft of client property or money.**
- 12. Property destruction.**

**G. The Division of Developmental Disabilities in the Department of Economic Security must allow the Independent Oversight Committee on persons with development disabilities thirty days to review new policies and major policy changes before the Division submits the policies or changes for Public Comment.**

This Fiscal Year, there were 7,758 Incident Reports for District Central IOC, while the number of Members served in District Central was 9,643, as of June 30, 2022. Additionally, 447 Behavior Treatment Plans were reviewed in District Central.

### **DDD MEMBERS WITH EXTREME BEHAVIORS/ARIZONA STATE HOSPITAL**

As the IOC reviews both the Incident Reports and the Behavior Treatment Plans, we become aware of issues that need to be addressed. One such issue was the fact that 2 District Central Members served by the Division are currently residing at the Arizona State Hospital. They are not given the opportunity for Active Treatment, they are locked in seclusion, and per the Incident Reports, are heavily medicated to control their behaviors and activity. We have been informed that because of the severity of the behaviors, it would be inappropriate to house these individuals outside of ASH. We are currently requesting a quarterly update on these individuals. Additionally, because Active Treatment is not being offered, and because they are not Cognitively able to understand why mechanical restraints are used on them or why they are in locked seclusion, (both of which are prohibited for DDD Members per Article 9, because Article 9 does not apply to ASH), we are asking the Division several questions: How much money is being sent to ASH to care for these individuals? Could this same amount of money be used to provide a setting (home) outside of ASH where they could get the rights afforded to them per Article 9, and still be in a safe environment, both for them and the community? This issue is a fairly new one, and we will continue to pursue it in the coming year. We are also in early discussion with the ASH IOC as well.

In addition to the two members at ASH, it has also been a concern that there are DDD members who have severe behavioral health concerns and that it is very difficult to work with them in the group home setting. After reading the Behavior Treatment Plans, and reviewing them in the Program Review meetings, the strategies and methodologies in the plan are not working with some of these individuals. These members are also taken to ASH, which is also very concerning. We believe that facilities are needed which can be locked, and then hire staff who have received a higher level of training for this complex level of care. DDD has a step-down unit, but it is currently occupied. There needs to be more than just one. When we asked DDD if anyone is looking into a resolution for these members with the severe behaviors, we were told that DDD leadership is working with the leadership from the two health plans (United Healthcare and Mercy Care) to be able to develop better residential options for DDD members who have these more extreme challenges. There are options involving "step-down" units for behavior, but, as stated previously, vacancy is a problem. Per DDD, This is a big topic and warrants additional conversation at a broader level with the Health Plans. Group Homes are staffed with individuals that are not trained to deal with these extreme behavioral needs. This is an issue District Central IOC will continue to pursue.

Another possible solution to this issue, as discussed by one of our IOC members, is that she is working with a group of mental health practitioners who are training to serve our DDD members. The goal is to provide an acute care system that bridges care after hospitalization, providing temporary placement for DDD members, better care in and reduced stays at an ER, as well as placement for lower IQ, aggressive individuals.

## **TRANSGENDER ISSUES IN GROUP HOMES**

Through attendance at Program Review Committee, we became aware of two members who are dealing with transgender issues. We have asked what DDD's policy is on transgender members in group homes. The staff expressed difficulties working with these individuals, and that they were not equipped to work with them. This is an issue we will continue to pursue in the coming year.

## **CLIENT FUNDS AND SERVICES**

A pretty consistent issue that is noted while attending Program Review Committee is that the Member's funds are over the \$2,000.00 limit, as allowed by AHCCCS/ALTHCS. The Spending Plans that we see are those members whose representative payee is either a Public Fiduciary or DDD. If ALTHCS reviews the bank account, and the member is over the threshold, the member could lose all services. AHCCCS/ALTHCS has been very lenient during the COVID period, and given the fact that most members received additional funds during this time. However, they are starting to request accountability again, and it would be devastating for the members to lose all services, through no fault of their own. The DDD policy, as we understand it, is that Client Funds notifies the team when the funds are at \$1000.00, to begin a spend-down plan. At \$1500, they team is notified again and the spend down should be completed before the individual reaches the \$2000. The problem was that the Support Coordinators were not given access to the member's accounts in order to review. All information came from Client Funds. Recently, access to view the Member's account was "unlocked" to the Support Coordinator, which allowed a more timely review of funds so that a timely spend down can occur if needed. Additionally, a new policy is out for public comment at this time regarding this issue, and that the Support Coordinator is allowed to approve expenditures up to \$499. Any expense above \$499 will need a supervisor's approval. I would like to think that District Central IOC bringing this issue to DDD's attention had something to do with the new direction and policy!

## **DENTAL CARE CONCERNS AND SEDATION**

District Central IOC was contacted by a family who was having difficulty getting dental treatment for their son, who is an individual served by DDD. We discovered that many dentists state that if the patient has a trach or any serious medical concerns, the treatment would need to be performed at a hospital.

Currently, St. Joseph's Hospital is the only hospital that offers this service. However, because the reimbursement from the health plans is not sufficient, St. Joseph's limits the number of dental cases performed. There are many members on the waiting list. This issue has been elevated to AHCCCS as a care concern.

A representative from United Healthcare reported that they are working closely with AHCCCS through updates from DDD for other ways that dental and anesthesia can be provided outside of a dental office and in an operating room or a facility that provides the same services available and allows the dental provider as well as an anesthesiologist to come on board and provide services. Banner is a current partner and they are currently discussing opportunities, but the health plans are also working with St Joseph's to gain more information as to how or why there has been a limitation

on providing dental services. The health plans are also working with the dental college, as well as other facilities who would be willing to work with an anesthesiologist. Prior authorizations are being received by United Health Care, and they will follow through until the services are provided, working to ensure that the appointments are scheduled in a timely manner.

### **AMMONIA TOXICITY FROM DEPAKOTE (VALPROIC ACID)**

District Central IOC received a report from a member that her son was in the hospital due to Ammonia Toxicity from his medication, Depakote. As the committee continued the discussion, it was learned that of the 11 members on the committee, 5 of us had a son or daughter, on Depakote, and 4 of the 5 had been hospitalized for ammonia toxicity. The 5<sup>th</sup> member's doctor had her daughter's blood serum levels regularly checked for the toxicity. By the time we could get a doctor's attention that this was not normal behavior, hospitalization was needed. We determined that if this issue was affecting nearly half of our committee, it should be an issue elevated to Dr. Dekker, DES medical director. He was kind enough to come to our next meeting, having researched the subject, including the number of DDD members taking Depakote. He reported the seriousness of the side effects, and that about 20% of the members could be affected by this medication. In addition to the information that was sent out by DES/DDD to families and providers to be aware of this medication and possible side effects, we, as IOC members sitting on the Program Review Committee, notice if a member is taking Depakote. If he is, we remind the team of the importance of getting the serum levels in order to prevent the ammonia toxicity. (A build-up of ammonia in the liver)

### **PAIN SCALE**

The Pain Scale is a topic that we have been discussing for several years. We sent a letter to DDD, requesting information on the pain scale assessment tool, and were told that there was, at that time, no pain scale assessment tool. It was recommended that DDD implement this into the system. There are times when DDD members have behaviors, but the team needs to make sure that the behaviors are not because of pain. Most often, the only way to determine this is through the use of a pain scale. Frequently, behaviors are treated with medication, and then more medication, however the cause could be because of pain, which is not resolved with the introduction of more psychotropic medications.

Because we have been discussing this for several years, to no avail, District Central IOC made a motion, listing our concerns, and requesting that DES/DDD develop a pain scale, also a section in the "Risk Assessment" section of the Person Centered Planning Document, which indicates that in some situations, members who are non-verbal, may communicate by hitting themselves to indicate they are in pain. A written explanation in the Planning Document of what the pain indicators are should also be included so that staff will not automatically assume the member is having a behavior and that there is a need for additional medication.

Dr. Dekker attended the following meeting, expressed his appreciation for bringing this important issue to his attention, and then explained several pain scale assessments that could be implemented for the members served by the Division, depending on cognitive

and language skills, leaning heavily towards the FLACC scale, (Face, Legs Activity, Cry, and Consolability) for DDD members.

Additionally, Arizona Senate Bill 1162 (from this last session, thank you Senator Barto!) provides that the pain management providers that are working with known chronic pain members can continue to prescribe pain medication without fear of prosecution. Also, The US Supreme Court determined that pain management is a human right and that as a right it cannot be taken away. The member can be treated for pain if the parent or guardian asks for a stronger than prescribed pain medication. This can no longer be blocked.

Because of this recent ruling, we will request that because pain management is a human right, that it be added into DDD policy as well as Article 9.

### **POST COVID RETURN TO DAY PROGRAMS**

It was learned that in spite of CDC guidelines and the American Disability Act, there were still Day Programs that were not allowing members to attend unless masks were worn. Many members served by the Division do not understand the rationale for masks, are tactically sensitive and cannot wear a mask, or have breathing issues where the mask is inappropriate. When the agencies were contacted by parents, informing them that they were not in compliance with the CDC guidelines, as well as violating the ADA, they still refused attendance unless the member was wearing a mask, all day. Even though this was brought to DDD's attention, the issue continued. Families and group homes either kept the member at home, or found other placement if available.

Another issue that came to our attention was that because of staffing issues, members could not return to the Day Program or Work program, especially if that member had an enhanced ratio staffing.

DDD is using the American Rescue Plan funds to increase the direct care staff salaries, so hopefully that will allow more members to return to their Programs.

### **PERSON CENTERED SERVICE PLAN**

DDD has adopted a new document, which will replace the former Individual Service Plan, and is now called the Person Centered Service Plan. DDD reported that this document is a plan that AHCCCS built, with other managed care organizations. Our IOC was concerned with several items: that this new document loses some of the important information that was formerly in the Individual Service Plan, and in our opinion, is necessary to include in order to have a complete picture of the individual, such as "History of the Individual" and "What Works and Doesn't Work for Me". Additionally, the Spending Plan is located in a drop down menu, and often times the Support Coordinator is not aware that it is available, and so it is missing. There needs to be additional training for the Support Coordinators, and families need to be aware of the changes. For example, if information from the old ISP is not included in the new PCSP, a family can request that it be included. However, this requires a very active, diligent, and aware parent/guardian to realize the difference. DDD should make this information available to families.

Previously, in the 90 day meetings which review and update the Person Centered Service Plan, required by AHCCCS, unless it was the Annual Review, the meetings only took about 15-30 minutes. With the new PCSP, the meetings are lasting approximately 2 hours, every 90 days.

Additionally, the Behavior Treatment Plan contains information that the PCSP does not contain. However, not every member has a Behavior Plan. District Central would like to see consistent information required for each member. The only way to ensure that this happens is for it to be included in the Person Centered Service Plan.

## **ARTICLE 9**

District Central has been actively involved in the drafts of the proposed Article 9. Attached to this Annual Report are the questions and concerns that we had regarding the proposed Article. In spite of repeatedly asking what the current status is, DDD's response is that they have no updates since the second Public Comment time period expired. We are still waiting for and extremely interested in the final draft, as Article 9 is the basis for what we, as an Independent Oversight Committee, follow to ensure that the rights and protections of the individuals served by the Division of Developmental Disabilities are secure and in place.

## **ABUSE AND NEGLECT CURRICULUM**

As a result of the sexual abuse and resulting pregnancy of a DDD Member, residing at Hacienda, Governor Ducey requested a curriculum for abuse and neglect awareness. A committee was formed, which determined a curriculum for Providers and Staff (Direct Care Workers) which would provide guidelines to recognize, avoid, and report any incidents of abuse and neglect. In addition to the curriculum for the Providers, a second curriculum was adopted from the state of Massachusetts, for the Members served by DDD.

District Central IOC has no issue with the curriculum for the Providers. We do, however, have many concerns about the curriculum for the Members served by the Division. We did not become aware of this curriculum until after it had become policy and was actually being distributed and taught. We discovered that the portion of Policy for the Member Curriculum that went out for Public Comment was merely a summary of the curriculum, not the content in its entirety. Upon review of the content, we noted that, first, it is twice as long as the curriculum for the Providers. The examples used to explain a point are extremely beyond the cognitive levels of the general DDD population. Secondly, the policy states that while the curriculum for the Providers MAY be used, the curriculum for the Members MUST be used in teaching the curriculum. (It cannot be tailored for the needs and cognitive level of the individual being taught.)

Additionally, the course will be taught in the Day Program. Our concern was who would be teaching this curriculum? What credentials does the instructor have? What if there are PTSD effects that result from this curriculum? (If a member has been previously abused, would this curriculum trigger memories that most Direct Care Staff providers are not equipped to handle?)

When we asked DDD what data they were collecting as a result of this curriculum, the response was *whether the member had taken the course or not*. We were speechless! No additional data, such as post-instructional behaviors that are new.

We were instructed to draft our questions and send them via a motion to the DDD Director. We did, and the responses from DDD were less than satisfactory. IOC was then told that our recourse was to have a phone conversation with the Director, which we did. At this point, the curriculum had been in circulation for about 6 months. We were told, basically, that they were going to continue to present the curriculum until the one year anniversary. (July 2022) At that point DDD would have the curriculum go out for Public Comment again, at which point changes could be made.

During the past year, we have read Incident Reports and have heard from parents that their child is now exhibiting new sexual behavior. When we asked if Quality Management could follow up with whether the individual named in the Incident Report had taken the Course, we were told that it was beyond their “scope of investigation”. When we elevated this concern, we were told that “Behavioral Health was involved.”

The guardians must give permission for this curriculum to be presented to the individual. We have spoken to numerous parents who weren’t even aware of what the curriculum was. As previously state, the Member Curriculum content that went out for Public Content was a SUMMARY of the content, so even if a parent was following the new policies being adopted by DDD, they would not have been able to review the entire content. (We still have not received an answer to our question as to whether a “summary” of a policy is sufficient to meet the legal standards of notification prior to adoption.) We shared the link with the families (which is difficult to navigate) and many contacted us to thank us for sharing the information and, upon their review, noted that permission would not be given. Regarding the permission forms, each agency created their own form. One form was 3 pages long, which included the link for the curriculum, as well as additional sites for better information; a second form was one page, which included the link; a third form was a simple permission form which contained no information regarding the curriculum. We suggested that DDD provide a consistent permission form, especially to reduce liability, as well as collect more data than just attendance.

Just to give you an example of the activities used to present the concepts: the Member is handed an umbrella and told to hold the umbrella over his/her head. The Presenter then throws popcorn on top of the member. The Member is supposed to understand the *symbolism* in this activity: The umbrella represents the information in the course, that will protect him/her from being abused. The popcorn represents the abuse from which they are being protected. This is an abstract concept symbolically, and not one that easily comprehended by most DDD members.

There are concepts taught in this curriculum, slides presented, and activities to participate in, which could so very easily introduce ideas not yet considered by the members (i.e. suicide), or trigger PTSD reactions that a Day Program staff is not prepared to address. Also, as stated previously, the Provider curriculum is not the same as the Member curriculum, which leads us to ask, “Who is training the Instructor to present this curriculum? Does the Instructor take both classes, as they are different? Why is there a need for two different curriculums?”

Needless to say, District Central is VERY CONCERNED about this curriculum. Our questions, DDD's responses, and our follow-up questions are attached to this document.

### **LEGISLATIVE ASSISTANCE**

As a result of not being aware of the Abuse and Neglect Concern, and knowing that the Developmental Disabilities Advisory Council has a provision regarding notification of Proposed Policies, we asked Senator Barto to propose legislation that would give IOC's the same privileges that the DDAC has regarding the review of policies before they go out for public comment. She did propose (SB 1231 an addition to ARS 38-4101, letter G: The Division of Developmental Disabilities in the Department of Economic Security must allow the Independent Oversight Committee on persons with development disabilities thirty days to review new policies and major policy changes before the Division submits the policies or changes for Public Comment.)

This will give us the opportunity to review the policies, and then meet as a body to discuss and vote on our remarks. When we did not have the additional 30 days, we were not always able to meet as a body to discuss and vote per the Open Meeting Law.

This additional time allows for that.

We thank Senator Barto for her continued support, for her concern for the Members served by the Division, including the Behavioral Health members, and the needs these individuals have for additional care and support. We also thank the entire Legislature for passing the Bills proposed by Senator Barto, and others, and look forward to continued cooperation as we all work to better the lives of Arizona citizens served by DDD.

### **INTRODUCTION OF NEW MEMBERS**

We appreciate the assistance we have received from both DDD and the community as we work to improve and increase our IOC membership. This year we have gained 3 new members, who come with a variety of experience and knowledge, which gives our committee a greater base for understanding and thoughtful discussion as we review Incident Reports and Behavior Plans, while always seeking to protect the rights of the individuals served by DDD.

While we gained three new members, we lost a very dear friend this year, our fearless leader of so many years, Karen VanEpps, who succumbed to breast cancer.

A few tributes from our IOC members:

"Karen Van Epps search for help for her sister with developmental disabilities led to her becoming a champion advocate for all of us the past 40+ years. She tirelessly worked publicly and within the Division of DD recommending and/or changing policy that infringe on the rights of the DD population. Karen always strived for "quality of life" services and the fundamental right to be treated with dignity and respect. Everyone in the community of DD has directly or indirectly benefited from Karen's extensive advocacy. It has been a privilege to have worked with Karen on the Human Rights Committee (now IOC) and we tremendously miss her. " Carol McNulty

“Even though I have a severely disabled daughter that has been in the DDD system for over 30 years, I really didn't know a whole lot about the inner workings of that system. I was asked to join the then titled "Human Rights Committee" by Linda Mecham. I didn't know what I was getting myself into! As I timidly attended my first meeting of the District Central Committee, Karen approached me with a warm welcome, a smile and words of encouragement. She taught me so much! Everyone was always throwing out names and acronyms with ease and I was usually lost, but Karen was always so patient and knowledgeable and answered my questions without making me feel inferior or dumb. I was always in awe of her dedication and enthusiasm as she worked tirelessly for this under-served population. Every time that I mentioned a problem that Amy was experiencing at her group home, Karen went to great lengths to help me find ways to solve the issue. She would call me several days later to see how things were going and if we had resolved the problem. I have always said that even though having a handicapped child is a challenge, with it comes many blessings. One of those blessings was getting to work with and know Karen. She will always be my hero!” Debbie Stapley

“The DDD community lost its most enduring advocate this year. Karen was a friend to all in need, a warm voice on the phone, and the source of calm and reason in sometimes chaotic times. She never wavered in pursuit of bettering lives and in doing what is right above all.” Sherry Howard Wilhelmi

“Karen VanEpps was a true advocate for as long as I knew her. She was involved in getting Partners in Policymaking started in AZ. She was involved in The Arc of Arizona and Arizona Consortium for Children with Chronic Illness. I got to know Karen better working with her on the Human Rights Committee/Independent Oversight Committee. she worked tirelessly for Persons With Intellectual Disabilities and advocated at the AZ legislature for the issues that were an issue raised at HRC/IOC. She put long hours in volunteering in a variety of capacities helping Persons With Intellectual Disabilities and informing members of the committees to be better advocates for Persons With Intellectual Disabilities.” Eva Hamant

“I was having an issue with my son's Day Program. I didn't know if what they were asking me to do was appropriate, so a friend suggested that I attend the Human Rights Committee Meeting. I was very nervous, but presented my concerns. Karen was the chair, and when I finished my remarks, she said she thought they could do something about this and would be getting back in touch with me. As I got up to leave, Karen thanked me for coming, and then asked me if I wanted to join the Committee! I knew about this committee, and no, I didn't want to join!! But I thought that if they were going to help me, the least I could do is join! And that was the beginning of a friendship that I don't think will ever be replaced. I learned that Karen and her Mother were very involved, as were so many others, from the very beginning: in the inception of Article 9, the sale of the Institutions in Phoenix and Tucson, the establishment of the Trust Fund (funds from the property sales), and participated in so many other committees and groups which promote the well-being of DDD Members. Karen knew the history. Karen knew the answers. Karen knew why things were supposed to be “that” way. Karen traveled all over the country, attending seminars and conferences, learning everything there was to learn, and then brought it back to Arizona for us to adopt and implement.

While we are doing our best to carry on in the legacy Karen left us, it will never be the same. District Central IOC, as well as the entire state of Arizona, lost a true friend to us all when she passed away.

We have tried to pick up the pieces, regroup, and carry on, and while we are doing our best, she will be forever missed, and always in our hearts.” Linda S. Mecham

Thank you for taking the time to read through our Annual Report. Please do not hesitate to contact us if you have any questions, concerns, thoughts, or insights that could help us (District Central IOC) as we continually work to promote the protections, welfare, and opportunities for the Individuals served by the Division of Developmentally Disabilities.

Respectfully Submitted,

*Linda S. Mecham*

Linda S. Mecham  
DDD District Central Independent Oversight Committee Chairperson

Addendums to our Annual Report  
Article 9  
Abuse and Neglect

## ADDENDUM #1: ARTICLE 9

Keep this in mind as you read:

RED = original and omitted

Black = original and retained

Black underlined = new

Blue = IOC Comments/Conclusions

### NOTICE OF PROPOSED RULEMAKING TITLE 6. ECONOMIC SECURITY CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY DEVELOPMENT DISABILITIES

#### PREAMBLE

<u>1. Article, Part or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 9	Amend
R6-6-901	Renumber
R6-6-901	New Section
R6-6-902	Renumber
R6-6-902	Amend
R6-6-903	Renumber
R6-6-903	Amend
R6-6-904	Renumber
R6-6-904	New Section
R6-6-905	Renumber
R6-6-905	Amend
R6-6-906	Renumber
R6-6-906	Amend
R6-6-907	Renumber
R6-6-907	Amend
R6-6-908	Repeal
R6-6-908	Renumber
R6-6-908	Amend
R6-6-909	Repeal
R6-6-909	Renumber
R6-6-909	Amend
R6-6-910	Renumber
R6-6-910	Amend

#### 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing Statute: A.R.S. 41-1954 (A) (3) and 36-554(C) (6)

Implementing statute: A.R.S . 36-552, 36-554, and 41-1954 (A) (1) (h)

**3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 27 A.A.R. 619, April 23, 2021 (*in this issue*)

**4. The agency's contact person who can answer questions about the rulemaking:**

Name: Christian Eide

Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005

or

Department of Economic Security  
1717 W. Jefferson, Mail Drop 1292  
Phoenix, AZ 85007

Telephone: (480) 340-8303

Fax: (602) 542-6000

E-mail: [ceide@azdes.gov](mailto:ceide@azdes.gov)

**5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Article 9 contains rules on Applicability, Prohibitions, ISPP Team Responsibilities, Program Review Committee (PRC), Monitoring Behavior Treatment Plans, Training, Sanctions, Emergency Measures, and Behavior Modifying Medications. The purpose of the rulemaking is to add, amend, and repeal rules to conform to current practice and terminology, ad to make the rules more clear, concise, and understandable. The Department last amended this Article in 1994. A Five-Year Review Report on Chapter 6 was approved by the Governor's Regulatory Review Council on December 1, 2015.

#5 Justification to amend or repeal a rule—Make the rule more “concise, clear and understandable—The revision only complicates the language

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

The Department did not review or rely on any study relevant to the rules.

#6 Reference to a study relevant to the rule—Department answer—The Department did not review or rely on any study relevant to the rules.

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

Not applicable.

#7 Showing of good cause—DD says not applicable.

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

The economic impact of the rulemaking is expected to be minimal (less than \$1,000) for all persons involved in the rulemaking and the application process. The persons directly impacted by this rulemaking are individuals who are applicants to the Division of Developmental Disabilities (Division) who voluntarily seek services through the Division. The rulemaking does not impose any obligation on the individual or applicant to accept or participate in services without informed consent. Consumers who apply to the Division will benefit from clear and updated requirements and processes. There are no negative impacts on small businesses as a result of this rulemaking. The Department and members of the public will benefit from the revision of Article 9 because the proposed rulemaking will make the provisions for member's behavior management more clear, concise, and understandable.

#8 Consumer impact—makes management of member's behavior management more "clear, concise, and understandable".

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

Name: Christian Eide

Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005  
or  
Department of Economic Security  
1717 W. Jefferson, Mail Drop 1292  
Phoenix, AZ 85007

Telephone: (480) 340-8303  
Fax: (602) 542-6000  
E-mail: [ceide@azdes.gov](mailto:ceide@azdes.gov)

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

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

No other matters are prescribed.

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

This rule does not require a permit.

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

Not Applicable.

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

No analysis was submitted.

#11. b. No federal law is applicable???

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

None

- 13. The full text of the rules follows:**

**TITLE 6. ECONOMIC SECURITY  
CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY  
DEVELOPMENT DISABILITIES**

**ARTICLE 9. MANAGING INAPPROPRIATE INTERVENTIONS FOR UNSAFE AND INAPPROPRIATE BEHAVIORS**

Section

<u>R6-6-901</u>	<u>Definitions and Location of Definitions</u>
<del>R6-6-901</del> <u>R6-6-902</u>	<u>Applicability</u>
<del>R6-6-902</del> <u>R6-6-903</u>	<u>Prohibitions</u>
<u>R6-6-904</u>	<u>Restricted Techniques</u>
<del>R6-6-904</del> <u>R6-6-905</u>	<u>ISPP Planning Team Responsibilities</u>
<del>R6-6-903</del> <u>R6-6-906</u>	<u>Program Review Committee (PRC)</u>
<del>R6-6-905</del> <u>R6-6-907</u>	<u>Monitoring Implementing Behavior Treatment Plans</u>
<del>R6-6-908</del>	<u>Emergency Measures Repealed</u>
<del>R6-6-906</del> <u>R6-6-908</u>	<u>Training</u>
<del>R6-6-909</del>	<u>Behavior Modifying Medications Repealed</u>
<del>R6-6-907</del> <u>R6-6-909</u>	<u>Sanctions</u>
<u>R6-6-910</u>	<u>Renumbered Physical Interventions for Emergency Safety Situations</u>

**ARTICLE 9. MANAGING INAPPROPRIATE INTERVENTIONS FOR UNSAFE AND INAPPROPRIATE BEHAVIORS**

**R6-6-901 Definitions and Locations of Definitions**

**A. Location of definitions. The following definitions applicable to the Article are found in the following Section or statute:**

<u>"Abuse:"</u>	<u>R6-6-901(B)</u>
<u>"Adult Behavioral Health Therapeutic Home"</u>	<u>A.R.S 36-401</u>
<u>"Article 9 Instructor"</u>	<u>R6-6-901(B)</u>
<u>"Aversive Stimulus"</u>	<u>R6-6-901(B)</u>
<u>"Behavior Plan"</u>	<u>R6-6-901(B)</u>
<u>"Behavioral Health Professional"</u>	<u>R6-6-901(B)</u>
<u>"Behavioral Health Respite Home"</u>	<u>R9-10-101</u>

"Behavioral Health Respite Homes" do not exist in DD services

<u>"Behavioral Health Therapeutic Home"</u>	<u>R6-6-901(B)</u>
<u>"Business Day"</u>	<u>R6-6-901(B)</u>
<u>"Case Manager"</u>	<u>A.R.S 36-551</u>
<u>"Chemical Restraint"</u>	<u>R6-6-901(B)</u>
<u>"Developmental Disability"</u>	<u>A.R.S. 36-551</u>
<u>"Direct Care Worker"</u>	<u>R6-6-901(B)</u>
<u>"Division"</u>	<u>A.R.S. 36-551</u>

<u>"Emergency Safety Situation"</u>	<u>R6-6-901(B)</u>
<u>"Escape Extinction"</u>	<u>R6-6-901(B)</u>
<u>"Habilitation"</u>	<u>A.R.S. 36-551</u>
<u>"Independent Oversight Committee" or "IOC"</u>	<u>R6-6-901(B)</u>
<u>"Intermediate Care Facility for Individuals with Intellectual Disabilities"</u>	<u>A.R.S. 36-551</u>
<u>"Least Intrusive"</u>	<u>R6-6-101</u>
<u>"Managing Employee"</u>	<u>R6-6-901(B)</u>
<u>"Mechanical Restraint"</u>	<u>R6-6-101</u>
<u>"Member"</u>	<u>R6-6-901(B)</u>
<u>"Neglect"</u>	<u>A.R.S. 36-569</u>
<u>"Nursing Care Institution"</u>	<u>A.R.S. 36-401</u>
<u>"Overcorrection"</u>	<u>R6-6-901(B)</u>
<u>"Physical Intervention"</u>	<u>R6-6-901(B)</u>
<u>"Planning Document"</u>	<u>R6-6-901(B)</u>
<u>"Planning Team"</u>	<u>R6-6-901(B)</u>
<u>"Program Review Committee" or "PRC"</u>	<u>R6-6-101</u>
<u>"Psychotropic Medication"</u>	<u>R6-6-901(B)</u>
<u>"Quality Management Professional"</u>	<u>R6-6-901(B)</u>
<u>"Response Cost"</u>	<u>R6-6-101</u>
<u>"Responsible Person"</u>	<u>A.R.S. 36-551</u>
<u>"Seclusion"</u>	<u>R6-6-901(B)</u>
<u>"Service Provider"</u>	<u>R6-6-901(B)</u>
<u>"Support Coordinator"</u>	<u>R6-6-901(B)</u>
<u>"Unsafe Behavior"</u>	<u>R6-6-901(B)</u>

**B. The following definitions apply to this Article:**

1. "Abuse" means the same as "abusive treatment" under A.R.S. § 36-569.
2. "Article 9 Instructor" means an individual approved by the Division to conduct training as outlined in R6-6-908.
3. "Aversive Stimulus" means the presentation of an unpleasant stimulus with the intent to induce changes in behavior.
4. "Behavior Plan" means an integrated, individualized, written treatment plan, based on a Behavioral Health Professional's provisional or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of a Member, that includes:
  - a. One or more treatment goals;
  - b. One or more treatment methods;
  - c. The date when the Member's Behavior Plan will be reviewed;
  - d. The dated signature of the Member or the Member's legal representative; and
  - e. The dated signature of the Behavioral Health Professional.

Will all behavior treatment plans need to be authored by a BHP, as defined in R6-6-901

Will all behavior treatment plans require an assessment of behavior?

Not all BHPs are permitted to diagnosis (e.g., behavior analyst)

- 5. “Behavioral Health Professional means:**
- a. A. An Individual licensed under A.R.S Title 32, Chapter 33, whose scope of practice allows the individual to:**
    - i. Independently engage in the practice of behavioral health as defined in A.R.S. 32-3251, or**
    - ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R. S. 32-3251 under direct supervision as defined in A.A.C. R4-6-101;**
  - b. A psychiatrist, as defined in A.R.S. 36-501;**
  - c. A psychologist, as defined in A.R.S. 32-3061;**
  - d. A physician, as defined in A.R.S. 32-1401;**
  - e. A registered nurse practitioner licensed as an adult psychiatric and mental health nurse;**
  - f. A behavior analyst, as defined in A.R.S. 32-2091**
  - g. A registered nurse with:**
    - i. A psychiatric-mental health nursing certification, or**
    - ii. One year of experience providing behavioral health services.**

“Behavioral Professional” means; a through g None of the “professionals” indicates a knowledge of developmental disabilities.

This will be an access to care issue. Please refer to the number of Qualified Vendors that were approved to provide Habilitation Consultation services to get an estimate on how many Qualified Vendors were conducting assessments and writing plans when the program was funded by DDD. I would also suggest meeting with the health plans to identify how many vendors offer services to adults with an intellectual/developmental disability (I/DD) to determine their capacity. Looking at the number of current behavior treatment plans required for all districts and dividing that by the number of qualified vendor personnel that meet the behavior health professional credentials and that work with people with an I/DD will provide an estimate on if R6-6-901 (B) (4) is realistic.

- 6. “Behavioral Health Therapeutic Home” means a residence that provides room and board, assists in acquiring daily living skills, coordinates transportation to scheduled appointments, monitors behaviors, assists in the self-administration of medication, and provides feedback to a Support coordinator related to behavioral health services under the clinical oversight of a Behavioral Health Professional.**

“Behavioral Health Therapeutic Home” does not exist as a DD option  
Will group homes under the Division become Behavioral Health Therapeutic Homes now?

- 7. “Business Day” means 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding holidays listed in A.R.S. 1-301.**

8. “Chemical Restraint” means medication administered as a method of restricting a Member’s freedom of movement, physical activity, or access to the Member’s own body that is not routine treatment for a Member’s medical or behavioral health condition.

Chemical Restraint—does not prohibit this. This is definitely prohibited in Article 9.

9. “Direct Care Worker” means a person who is employed or contracted to provide primary personal care, guidance, or supervision to a Member in the Service Provider’s care.

10. “Emergency Safety Situation” means unanticipated Unsafe Behavior.

11. “Escape Extinction” means the discontinuation of negative reinforcement for a behavior.

12. “Inappropriate Behavior” means a Member’s actions which a Behavioral Health Professional, Service Provider, or Planning Team reasonably believes to be impeding an individual’s ability to optimally function in society.

13. “IOC” means an Independent Oversight Committee, established under A.R.S. 41-3801.

14. “Managing Employee” means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of a Service Provider.

15. “Member” means the same as “Client: as defined in A.R.S 36.551.

16. “Overcorrection” means, for the purpose of the Article, a group of procedures designed to reduce Inappropriate Behavior, such as:

- a. Requiring a Member to improve the environment to a state better than existed prior to the occurrence of the Inappropriate Behavior; or
- b. Requiring a Member to repeatedly practice a behavior by engage in effortful behavior directly or logically related to repairing damage caused by the Member’s behavior as a tactic to evoke behavioral change.

17. “Physical Intervention” means a technique used on an emergency basis by an individual who is providing care or service to a Member to restrict the movement of the Member by direct physical contact to prevent the Member from seriously harming self or others.

18. “Planning Document” means a written statement of services that is separate from the Behavioral Plan and shall be provided to a Member, including Habilitation goals and objectives, that is developed following an initial eligibility determination and revised after periodic reevaluations.

19. “Planning Team” means a group of people including:
- a. The Member;
  - b. A Responsible Person
  - c. The Support Coordinator;
  - d. Other State of Arizona Department of Economic Security staff, as necessary; and
  - e. Any Service Provider selected by the Member, Responsible Person, or the Department.

The member should be able to invite anyone they want to join their planning team. The only mention of whom a member can invite is a service provider. What if they want their pastor or a non-DDD funded employer, family friend, etc.

20. “Psychotropic Medication” means behavior-modifying medication that affects a Member’s mental status, behavior, or perception.
21. “Quality Management Professional” means an individual charged with the evaluation and assessment of Member care and services to ensure adherence to standards of care and appropriateness of services.
22. “Seclusion” means, for the purpose of the Article, restricting a Member to a room or area, through the use of locked doors or any other device or method that precludes the Member from freely exiting the room or area, or that a reasonably prudent person would believe precludes the Member from freely exiting the room or area. In the case of a community residence, restricting a Member to the residential site, according to specific provisions of a Planning Document, physician’s orders, or court order, does not constitute Seclusion.
23. “Service Provider” means any individual or entity as defined in A.R.S. 36-551 as well as Division staff who administer direct services to Members.
24. “Support Coordinator” means the same as “Case Manager” as defined in A.R.S. 36-551.
25. “Unsafe Behavior” means a Member’s action or activity, whether intentional, unintentional, or negligent that causes a risk of imminent harm to the Member or others.

### **R6-6-901 R6-6-902. Applicability**

These rules apply to:

1. All programs operated, licensed, certified, supervised or financially supported by the Division.
2. All habilitation programs as defined in A.R.S. § 36-551(18), as well as all interventions included in this Article, shall be addressed in the client's ISPP.

A. This Article applies to all programs operated, licensed certified, supervised, or financially supported by the Division in accordance with A.R.S. 36-552, 39-2939, or 36-2940, and includes all Behavior Plans implemented or monitored by a Service Provider in accordance with this Article.

Will behavioral health providers that are funded through Mercy Care or UHC be responsible for following Article 9 if they are conducting a functional behavior assessment (FBA) or a functional analysis (FA) in the members home? If so, how is that going to be communicated to them?

B. For services provided in healthcare institutions as listed in R9-10-102(A), this Article only applies to the following:

1. Intermediate Care Facilities for Individuals with Intellectual Disabilities;
2. Nursing Care Institutions;
3. Adult Behavioral Health Therapeutic Homes; and
4. Behavioral Health Respite Homes.
- 5.

C. For behavioral health services authorized in accordance with A.R.S. 36-2939(A)(2), this Article only applies to:

1. Behavioral Health Therapeutic Homes; and
2. Behavioral Health Respite Homes.

D. This Article does not apply to:

1. Health and medical services authorized under A.R.S. 36-2939(A)(5); or
2. Dental services authorized under A.R.S. 36-2939(A)(6).

### **R6-6-902. R6-6-903. Prohibitions**

A. The following behavioral intervention techniques are prohibited:

1. The use of seclusion (locked time-out rooms).
2. The use of overcorrection.
3. The application of noxious stimuli.
4. Physical restraints, including mechanical restraints, when used as a negative consequence to a behavior.

B. The use of behavior modifying medications is prohibited, except as specified in R6-6-909, if:

1. They are administered on an "as needed" or "PRN" basis; or
2. They are in dosages which interfere with the client's daily living activities; or
3. They are used in the absence of a behavior treatment plan.

C. No person shall implement a behavior treatment plan which:

1. Is not included as a part of the ISPP; and
2. Falls under R6-6-903(A), without approval of the PRC.

A Service Provider shall not:

1. Abuse or Neglect a member.
2. Use a restricted technique under R6-6-904 with a Member as a negative consequence, or
3. Use Psychotropic Medication as a Chemical Restraint.

service providers shall not use psychotropic medicines as chemical restraint.  
How will this be enforced?

A, B,C ABOVE: all eliminated. Reinstate

## **R6-6-904. Restricted Techniques**

- A. The PRC is prohibited from approving Behavior Plans that include the use of restricted techniques that meet any of the following criteria:
1. Overcorrection as a form of punishment;
  2. Seclusion in a room, whether locked or where egress is prevented;
  3. Aversive Stimuli as a punishment;
  4. Physical Intervention, including Mechanical Restraints, as a punishment; or
  5. Techniques that in intent or execution violate a Member's rights as specified in A.R.S. 35-551.01 or other applicable laws, cause physical or psychological pain or harm to a member, or are used as a form of punishment.
- B. A Service Provider may only see the following techniques when the techniques are included in a Behavior Plan approved by the PRC and in the manner specified in the approved Behavior Plan:
1. Escape Extinction;  
escape extinction should never be allowed.
  2. Response Cost;  
mentions response cost, but is not defined in the definition list.
  3. Physical Intervention, including Mechanical Restraints;
  4. Administration of Psychotropic Medication for the purposes of behavior modification unless an exception is granted by the Division; or  
administration of psychotropic medicines for the purpose of behavior modification which seems to be a chemical restraint that is prohibited.
  5. Other techniques identified by the Division or the Planning Team as having the potential to:
    - a. Infringe on a Member's legally mandated rights.
    - b. Cause either physical or psychological pain or harm, or
    - c. Be used as a form of punishment.

Who at DDD would be responsible for approving the use of a psychotropic medication as a PRN? How would the approval or denial be communicated to the Qualified Vendor?

Restricted Techniques, 1 through 5, Remove

Revised R6-6-904. is of concern because with approval from PRC, restricted techniques can now be approved in a Behavior Plan. Those techniques include; Escape extinction, response cost, physical intervention including mechanical restraints and other techniques having the potential to infringe on members rights and protection from harm. The new revision changes the rule on PRN psychotropic medication granting an exception from the Division

### **R6-6-904. R6-6-905 ISPP Planning Team Responsibilities**

Upon receipt of the PRC's response and as part of its development of the client's ISPP, the ISPP team shall either:

1. Implement the approved behavior treatment plan; or
2. Accept the PRC recommendation and incorporate the revised behavior treatment plan into the ISPP; or
3. Reject the recommendation in whole or in part and develop a new behavior treatment plan to be resubmitted to the PRC and Human Rights Committee.

The Planning Team shall:

1. Participate in the development of a Behavior Plan to modify a Member's Unsafe Behaviors or Inappropriate Behaviors to improve the Member's quality of life.
2. Submit all new or revised Behavior Plans to the PRC for approval.
3. Comply with the determination of the PRC or reject the PRC recommendations and participate in redeveloping the Behavior Plan for resubmission to the PRC.

**R-6-6-905** does not mention including the planning document nor the IR that occurred since the last PRC approved in the BTP. this would help IOC to see if a violation of member's rights and the IR to see if a trend due to the previous BTP alternative behavior/target behaviors.

### **Section R6-6-903. R6-6-906 - Program Review Committee (PRC)**

A. The ISPP team shall submit to the PRC and Human Rights Committee any behavior treatment plan which includes:

1. Techniques that require the use of force.
2. Programs involving the use of response cost.
3. Programs which might infringe upon the rights of the client pursuant to applicable federal and state laws, including A.R.S. § 36-551.01.
4. The use of behavior-modifying medications.
5. Protective devices used to prevent a client from sustaining injury as a result of the client's self-injurious behavior.

B. The PRC shall be responsible for approving or disapproving plans specified in subsection (A) above and any other matters referred by an ISPP team member.

C. The PRC shall review and respond in writing within ten working days of receipt of a behavior treatment plan from the ISPP team, either approving or disapproving the plan. The response shall be signed and dated by each member present and shall be transmitted to the ISPP team with a copy to the chairperson of the Human Rights Committee for review and recommendations at its next regularly scheduled meeting pursuant to R6-6-1701 et seq. The response shall include:

1. A statement of agreement that the interventions approved are the least intrusive and present the least restrictive alternative.
2. Any special considerations or concerns including any specific monitoring instructions.
3. Any recommendations for change, including an explanation of the recommendations.

D. Each PRC shall issue written reports, as prescribed by the Division, summarizing its activities, findings and recommendations while maintaining client confidentiality.

1. On a monthly basis, report to a designated Division representative, with a copy to the chairperson of the Human Rights Committee.

2. On an annual basis, by December 31 of each calendar year, report to the Assistant Director of the Division of Developmental Disabilities, with a copy to the Developmental Disabilities Advisory Council.

E. The PRC shall be composed of, but not be limited to, the following persons designated by the District Program Manager:

1. The District Program Manager or his designee, who shall act as a chairperson.

2. A person directly providing habilitation services to clients.

3. A person qualified, as determined by the Division, in the use of behavior management techniques, such as a psychologist or psychiatrist.

4. A parent of an individual with a developmental disability but not the parent of the individual whose program is being reviewed.

5. A person with no ownership in a facility and who is not involved with providing services to individuals with developmental disabilities.

6. An individual with a developmental disability when appropriate.

A. The PRC shall include the following persons designated by the Division:

1. A Division employee who shall act as the PRC chairperson and who is a non-voting member of the PRC;

The PRC is not a voting member but should be a voting member as usually the person most trained by DDD.

2. A person qualified in the use of behavior management techniques, such as a Behavioral Health Professional;

3. A member of the IOC;

IOC is mentioned as required attendance, but IOC are volunteers and don't always have the free time, especially if they work or have a child/adult with IDD. Maybe mileage or a stipend would incentivize attending since reading and attending PRC is over the 10 hrs. AOA suggests for IOC volunteers.

Article 9 now requires an IOC member to be on the PRC committee. IOC members are volunteers. How will the district cope with the fact that we don't have enough IOC members to volunteer their time for PRC meetings?

4. A Quality Management Professional; and

What are the qualifications for someone to be considered a quality management professional? Per the definition located in R6-6-901 (B) (21) there are no specific certifications or training required.

5. A community member from at least one of the following categories:

a. A parent of an individual with a Developmental Disability who is not the parent of the Member being reviewed;

b. A person with no other personal or professional relationship with the Division;

or

c. An individual with a Developmental Disability.

Is the community member a mandatory attendance and how will DDD know if they are qualified to read the BTP and review it at the PRC meeting.

- B. The PRC shall meet to review and approve or deny all submitted Behavior Plans.
  - C. The PRC chairperson shall send the PRC's written determination to the Planning Team within five Business Days of the meeting described in R6-6-906(B).
    - 1. PRC approval of a Behavior Plan shall include:
      - a. A statement of agreement that the interventions approved are the Least Intrusive least restrictive interventions, and that the interventions are in compliance with R6-6-904.
      - b. Any special considerations or concerns including specific monitoring instructions; and
      - c. Any formatting or PRC procedural or documentation changes in the Behavior Plan that need to be made and resubmitted to the PRC before the Behavior Plan is considered fully approved.
    - 2. PRC denial of a Behavior Plan shall include:
      - a. The reason for denial;
      - b. Recommendations for changes to the Behavior Plan; and
      - c. An explanation of the recommendations.
- F. A PRC shall be separate from but a complement to the ISPP team, and the Human Rights Committee established pursuant to R6-6-1701 et seq.

### **R-6-906**

In the former R-6-903 (A) (4) a behavior treatment plan was needed for anyone that lived in a DDD funded residential placement that took behavior modifying medications. With the deletion of this requirement, are members no longer required to have a behavior treatment plan just because they live in a DDD funded residential program and take behavior modifying medications? If so, how is it determined if a plan is needed or not, who makes that decision, what is the criteria, how often is the topic revisited? Provider Representatives are no longer a part of the Program Review Committee. It is important to have provider representatives included since they are the ones that work with the members daily therefore, they have a good idea of what would work or not work with a member, if a staff would be able to understand the plan and they provide suggestions based off their experiences working with members with the same target behaviors.

### **Section R6-6-905. - Monitoring Behavior Treatment Plans R6-6-907 Implementing Behavior Plans**

Each ISPP team shall specifically designate and record in the ISPP the name of a member of the team, excluding those direct service staff responsible for implementing the approved behavior treatment plan, who shall:

- A. After a Behavior Plan is approved by the PRC, the Division shall identify all Service Providers subject to the Behavior Plan and provide a copy of the approved Behavior Plan to those Service Providers.
- B. A Service Provider identified in R-6-6-907(A) shall:
  - 1. Ensure that the behavior treatment plan Behavior Plan is implemented as approved by the PRC.
  - 2. Ensure that all persons individuals implementing the behavior treatment plan Behavior Plan have received appropriate training as specified in R6-6-906 R6-6-908 and as appropriate for the Member's Behavior Plan;
  - 3. Maintain training records of all individuals specified in R6-6-907(B)(2);

- 3-4 Ensure that objective, and accurate data are maintained in the client's record;
- 4-5 Evaluate, at least monthly, collected data and other relevant information as a measure of the effectiveness of the **behavior treatment plan** Behavior Plan; and
- 5-6 Conduct on-site observations of the implementation of the Behavior Plan **not less than** at least twice per month and prepare, sign, and place in the **client's Member's** record a report of all observations.

Are the "at least two times per month" observations per member or per location that the member's plan is implemented in? (e.g., two times in the DTA and two times in the group home)

A Behavior Plan no longer requires documentation that the guardian or the individual has signed "informed consent" for psychotic medication.

Who is funding and training the service providers for the BTP that they have to train their staff to implement?

Nowhere does the rule mention that the person writing the BTP knows the individual for whom the BTP is written nor that the writer attends the planning team where the team agrees to the BTP.

### **Section R6-6-906. R6-6-908 – Training**

A. Any person who is involved in the use of a behavior treatment plan shall be trained by the Division or trained by an instructor approved by the Division prior to such involvement.

B. Initial training shall cover at a minimum:

1. Provisions of law related to:

- a. Interventions; particularly this Article and 42 CFR 483.450 October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;
- b. Legally mandated rights of individuals with developmental disabilities; particularly A.R.S. §§ 36-551.01, 36-561 and 42 CFR 483.420 (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;
- c. Confidentiality; particularly A.R.S. §§ 41-1959 and 36-586.01 and 42 CFR 483.410(c)(2) (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State.
- d. Abuse and neglect prohibitions pursuant to A.R.S. § 36-569.

2. Intervention techniques, treatment and services, particularly addressing the risks and side effects that may adversely affect clients.

especially important to include,  
excludes testing for tardive dyskinesia

3. A general orientation to:

- a. Division goals with respect to the provision of services to people with developmental disabilities.
- b. Related policies and instructions of the Division.

C. With respect to the use of interventions, training shall include hands-on or practical experience to be conducted by instructors approved by the Division, using a curriculum approved by the Division, and who have experience in the actual use of interventions as opposed to administrative responsibility for such use.

D. In addition to initial training, the Division shall ensure that refresher training is available as necessary to maintain currency in knowledge and recent technical trends related to intervention for the management of inappropriate behavior.

E. Physical management techniques shall only be used by those persons specifically trained in their use.

F. The following records and documents related to training shall be maintained by the Division for five years and be available for public inspection.

1. A summary of the training plan adopted by the Division in compliance with this Section, including schedules, instructors, topics, and expressed parameters of the hands-on or practical experience component of the training.
2. Required special knowledge, skills, training, education or experience of the instructors related to managing inappropriate behaviors.
3. A list of persons satisfactorily completing initial and refresher courses and course dates.

G. The Division shall review the training plan at least every two years for compliance with all applicable provisions of law and Division policy as well as for the protection of clients.

#### Reinstate DDD training,

- A. A Service Provider shall ensure Managing Employees, Direct Care Workers, and supervisors of Direct Care Workers successfully complete Article 9 Training.
- B. All training under this Article shall be taught by an Article 9 Instructor using the curriculum and method approved by the Division.
- C. Article 9 training shall include:
  1. The requirements, restrictions, and purpose of this Article;
  2. Interventions, including those described in this Article;
  3. Legally mandated Members' rights;
  4. Confidentiality requirements; and
  5. Division policies and procedures relating to this Article.
- D. Article 9 training shall be completed:
  1. For initial training, within 90 calendar days of hire or before working directly with Members without supervision from someone with a current certification in Article9, whichever is earlier; and
  2. For recertification as directed by the Division.

### **Section R6-6-907 –~~Section R6-6-909~~ - Sanctions**

For programs operated, licensed, certified, supervised or financially supported by the Division, failure to comply with any part of this Article may be grounds for suspension or revocation of a license, for termination of contract, employment, or for any other applicable administrative or judicial remedy.

The Division may impose sanctions for failure to comply with any part of this Article, including:

1. Suspension or revocation of a license or certification;
2. Termination of a contract;
3. Termination of individuals directly employed by the State of Arizona;
4. Prohibition against contact with Members; and
5. Any other administrative, contractual, or judicial remedies.

### **Old Sanctions—Reinstate**

### **Section R6-6-908 - Emergency Measures REPEALED**

A. Physical management techniques employed in an emergency to manage a sudden, intense, or out-of-control behavior shall:

1. Use the least amount of intervention necessary to safely physically manage an individual.
2. Be used only when less restrictive methods were unsuccessful or are inappropriate.
3. Be used only when necessary to prevent the individual from harming self or others or causing severe damage to property.
4. Be used concurrently with the uncontrolled behavior.
5. Be continued for the least amount of time necessary to bring the individual's behavior under control.
6. Be appropriate to the situation to ensure safety.

B. When an emergency measure, including the use of behavior modifying medications pursuant to R6-6-909(D), is employed to manage a sudden, intense, out-of-control behavior, the person employing that measure shall:

1. Immediately report the circumstances of the emergency measure to the person designated by the Division and to the responsible person.
2. Provide, within one working day, a complete written report of the circumstances of the emergency measure to the responsible person, the case manager, the chairperson of the Program Review Committee, and the Human Rights Committee.
3. Request that the case managers reconvene the ISPP team to determine the need for a new or revised behavior treatment plan when any emergency measure is used two or more times in a 30-day period or with any identifiable pattern.

C. Upon receipt of a written report as specified in subsection (B)(2) above, the PRC shall:

1. Review, evaluate and track reports of emergency measures taken; and
2. Report, to a person designated by the Division, instances of possible excessive or inappropriate use of emergency measures on a case-by-case basis for corrective action.

### **Emergency Measures need to be reinstated**

**Section R6-6-909 - Behavior-modifying Medications REPEALED**

A. The Division shall make available the services of a consulting psychiatrist who shall review cases and provide recommendations to prescribing physicians to ensure that the medication prescribed is the most appropriate in type and dosage to meet the client's needs.

B. Behavior-modifying medications shall be prescribed and administered only:

1. When, in the opinion of a licensed physician, they will be effective in producing an increase in appropriate behaviors; and it can be justified that the harmful effects of the behavior clearly outweigh the potential negative effects of the behavior modifying medication.
2. As part of a behavior treatment plan in the ISPP.
3. With the informed consent of the responsible person.

C. The Division shall provide the following monitoring, in addition to that specified in R6-6-905, for all behavior treatment plans that include the use of a behavior-modifying medication:

1. Ensure that collected data relative to the client's response to the medication is evaluated, at least quarterly, at a medication review by the physician and the member of the ISPP team designated pursuant to R6-6-905 and other members of the ISPP team as needed.
2. Ensure that each client receiving a behavior-modifying medication is screened for side effects, and Tardive Dyskinesia as needed, and that the results of such screening are:
  - a. Documented in the client's case record;
  - b. Provided immediately to the physician, responsible person, and ISPP team for appropriate action if the screening results are positive; and
  - c. Provided to the Program Review Committee and the Human Rights Committee within 15 working days for review of screening results that are positive.

D. In the event of an emergency, a physician's order for a behavior modifying medication may, if appropriate, be requested for a specific one-time emergency use. The person administering the medication shall immediately report it pursuant to R6-6-908(B).

E. The responsible person shall immediately be notified of any changes in medication type or dosage.

Reinstate Behavioral modifying medications R6-5-909.

B.3 Removes informed consent. Where is informed consent for the psychotropic medicines and BTP in the Rule?

C. Data is not collected, medication is not evaluated quarterly ,

C.2 Screening for Tardive Dyskinesia is eliminated.

These would all be against the person's rights and is important to retain.

## Section R6-6-910 – Renumbered

- A. In the event of an Emergency Safety Situation that is not covered by the Member’s Behavior Plan, a Service Provider, its employees, or its agents may apply Physical Interventions in accordance with R6-6-910(B) to ensure the safety of the Member or others.
- B. Physical Interventions used during an Emergency Safety Situation shall be:
  - 1. The least amount of intervention necessary to safely manage an Emergency Safety Situation;
  - 2. Used only when less restrictive methods are unsuccessful or are inappropriate;
  - 3. Used only when necessary to prevent the Member from harming self or others;
  - 4. Implemented during the Emergency Safety Situation for the least amount of time necessary; and
  - 5. Performed only by individuals trained in the implementation of Division-approved intervention techniques.
- C. The Planning Team shall reevaluate a Behavior Plan when Physical Intervention is used in response to an Emergency Safety Situation two or more times in a period of 30 calendar days or with any identifiable pattern.

Use of Emergency measures does not mention using for behavior and the need to stop the emergency measure when the behavior stops.

### CONCLUDING THOUGHTS

When Article 9 was developed, literally the whole state was represented by DD staff and families. It has stood the test of time since 1994. According to page 604, #5, the reason the rule should be amended is to make it clear, concise, and understandable. (This has never been a problem). #6 shows that the State did not review or rely on any study relevant to the rule. #7 says a “showing of good cause as to why the rulemaking is necessary” is not applicable. #11 does not indicate that any federal law is applicable to the changes.

PRC has left out a provider of DD services on the committee, The Chair is not allowed to vote and perhaps, most important is that each committee is to have a behavioral professional . This has not happened in District Central. It does not mention that a Behavior Plan must be accompanied by a Planning Document.

Karen Van Epps, District Central IOC Chair

Quote, “Article 9 has had a significant impact in improving quality of life for many individuals. The sense of community has become the focus as many people, who at one time resided within the confines of an institution, now experience the fulfillment of value as community members. The role of service provider has shifted, from one of controller, to partner in support of individuals”.

The new revisions are in conflict with;

ARS 36-55.01 Developmentally disabled persons rights guaranteed

ARS 36-551. Prohibiting certain treatment or drugs; use of aversive stimuli

DD members are much different from behavioral health members and need the protections that the Article 9 provided. It is very important to retain the language of Article 9 as originally written or if changes are made, they should only be made for clarification. The fear is that the proposed rules may necessitate institutional care for DD members instead of promoting community living as demanded by Medicaid/CMS.  
Carol McNulty, District Central IOC Vice-Chair

DD members are much different from behavioral health members and need the protections that the Article 9 provided. It is very important to retain the language of Article 9 as originally written or if changes are made, they should only be made for clarification. The fear is that the proposed rules may necessitate institutional care for DD members instead of promoting community living as demanded by Medicaid/CMS.

Who was included in this rewrite process? This current revision seems distinctly slanted toward Behavioral Health, rather than DDD with IOC oversight.

A clear definition of the following is needed to be in place:

What are the violations and what needs to be approved.

Definition of techniques that are required for PRC approval.

Definition of "emergency measure", and when is it to be reported. No reporting measures are included in the new revision. All Emergency measures are removed.

("emergency measures can only be used in concurrent with the behavior"). Replaced with "Least amount of time for least amount of force", but does not define that it must be concurrent with the behavior, which infers there may be an offset, which means member may be restrained longer than the behavior. This needs clarification.

Removed language that states members shall be protected from chemical restraints.

This gives permission for medications to be administered at the whim of someone who just may not want to be bothered with the Member.

Tardive Dyskinesia check has been removed. This is vital to the protection and health of the Member.

Where is Informed Consent?

DDD has been assured that Article 9 training will not change fundamentally, other than specific revisions to the new Article 9, but where are the guarantees for that, if the basis for the current article 9 training is being removed regarding the Member's rights and restrictions.

This new article 9 sets up the perfect model for a medical model/institutions.

What was the purpose of this rewrite? "To make it clear, concise, and understandable." Pg. 604, #5, #6 and #7. It is not clear, concise, and understandable. This language is not easily understood by those who would oversee its implementation.

If only a behavioral health professional is to write the plan, how is the training of the plan going to be translated from the behavioral health professional to the Direct Care Staff who are directly responsible for implementing it with the member? If a BCBA is paid to write the plan, where is the funding and facilitation for training the plan, once it is approved? This is an Access to Care concern. Even if the funding is in place, how accessible is the professional to the planning teams and members?

The revision does not state that the planning team will not be writing the plan, it says they will be *active* in writing the plan. However, they can't write a plan with any of the restricted techniques without the oversight or direct intervention of the behavioral health professional. It is unclear what access or ability a planning team will have to write a plan. If all plans have to be approved or facilitated by a behavioral health professional, then what plans are left that can be written without one? With this rewrite, we are removing the ability of a planning team to write a plan by themselves.

Historically, Article 9 was all about promoting the potential of our members to interact in the community. This revision of Article 9 as being presented by Behavioral Health has nothing to do with promoting individuality or potential in the community. This initiates a path to going back to an institutional model where we can keep people safe, and if that is accomplished by chemical restraint, then that will be acceptable.

Bottom Line: We are moving away from enforcing rights and moving back towards an institutionalized model to where we can chemical restrain people to ensure their safety. It has nothing to do with their potential or their interaction in the community. This is against the Medicaid model, which is promoting a strong interaction with the community. This is a time warp back to institutionalization.

In closing, traditionally, Article 9 was written to protect vulnerable adults in residential settings, whether they do or do not have a guardian/responsible person, from abuse and neglect. This new rewrite does not accomplish that goal. Is this level of support needed for all members served by DDD? Are these changes really in the best interest of the Members and supporting them to meet their potential in the community as opposed to just keeping them safe in a medical model by chemical restraints, and do they support guidelines from Medicaid? This new rewrite of Article 9 is setting the stage for a behavioral health model: Behavioral health will come into the group home to implement the plan twice a week. Staff will not implement the plan. Thus, the way DDD does services now is going to change. There will not be consistency within the group home, the DTA, the community using the same language and the same techniques. By removing safeguards currently in place, and in rewriting Article 9, the program will be moved into a behavioral health model, which is not the DDD model.

Linda Mecham; Compiled from IOC Meeting held May 24, 2021 @ 10:00 AM

Individuals with intellectual and developmental disabilities (I/DD) should be assured safety and security within the context of dignity of risk, autonomy, and choice. It is essential that we promote each individual's ability to be valued, fully participating members of the community and to engage in meaningful and relevant activities. [A 2018 report published by the Council on Quality and Leadership, entitled, "Restraint, Restrictive Interventions, and Seclusion of People with Intellectual and Developmental Disabilities"](#) notes that while hotly contested, there is inconclusive evidence of their effectiveness. In fact, the study notes that their use increases the risk of death, injury, and psychological harm not only for people with disabilities, but for the individuals employed to support them.

Article 9 in Arizona historically, proactively, and positively supported the positive and adaptive behavior of individuals with I/DD. Article 9 has been used as a template for the development of best practice and model policies for supporting individuals with I/DD across the country. One example is the [Jensen Settlement Agreement in Minnesota](#), the result of a lawsuit filed against DHS in 2009 alleging that the former Minnesota

Extended Treatment Options (METO) program used restraint and seclusion in a way that broke the law and violated the rights of people with disabilities. Jensen required person-centered thinking, positive behavioral supports and serving people in the most-integrated setting consistent with the person's goals, dreams, and aspirations. It is therefore, of great concern that the revised Article 9 would seem to allow certain elements historically prohibited. A review of recent reports from the DDD Independent Oversight Committee's indicate that there is an overall theme in the response by individuals with I/DD to their behavioral treatment plans: a lack of trained and passionate direct care workers results in individuals with I/DD feeling that they are rushed, disrespected and as a result they engage in behaviors deemed "inappropriate".

### **Restraints, Restrictive Interventions, Response Cost, Seclusion**

We are particularly concerned with the following changes to Article 9, and suggest the following:

*Overcorrection as a form of punishment* -- should be explicitly prohibited without the modifier "as a form of punishment".

*Aversive stimuli as a punishment* -- should be explicitly prohibited without the modifier "as a form of punishment".

*Response Cost* -- should be explicitly prohibited without the modifier "as part of a Behavior Plan approved by the PRC.

*Physical Intervention, including mechanical restraints* -- should be explicitly prohibited without the modifier "as part of a Behavior Plan approved by the PRC.

Psychotropic Medication- should expressly include provisions for informed consent for the initial administration of any psychotropic medication, changes in doses, and screening protocols for side effects. PRN medications for the purpose of behavior management should be prohibited.

Escape Extinction -- should be explicitly prohibited.

### **Behavior Plans**

We concur with prior suggestions from the DDD Independent Oversight Committees: DDD should develop a standard template for Behavior Treatment Plans with participation and input from legal guardians, identify antecedent behaviors and ensure that the individuals developing the plan have familiarity with the individual with I/DD.

The proposed rule should require that behavior plans include documentation of proactive techniques to identify triggers, interventions to be utilized before behaviors escalate and skills training to support individuals to improve their self-regulation and/or use alternative and augmentative communication to enable them to communicate when they are stressed, in pain, etc.,

### **PRC Membership**

The revisions to the membership may result in a lack of experience and expertise in supporting individuals with I/DD. While we agree that PRCs should also include representatives with Quality Management and Behavioral Management backgrounds, it is important to maintain inclusion of representatives with experience in providing training and skill development to individuals with I/DD (habilitation providers), and District Program Management staff as voting members.

## Training

There appears to be an elimination of the requirement that all individuals within the Division and its qualified vendors complete Article 9 training. This training ensures that everyone, from front line staff to executives are aware of the importance of maintaining the human rights of individuals with I/DD. Further, it does not appear that the Behavioral Health professionals and Quality Management professionals appointed to the PRCs will be required to complete Article 9 training.

## Data Collection

The requirement that within one working day a report must be submitted when emergency measures are utilized has been deleted. Further, the reference that planning teams convene to develop a new behavior treatment plan if one does not already exist has also been deleted and should be added. The Independent Oversight Committees have repeatedly requested a standardized format for reporting incidents across regions and reference to this data collection, tracking, trending, reporting and relevant changes to policies and procedures should also be included in any revision to Article 9.

## Conclusion

Integrating acute, behavioral, HCBS and LTSS approaches should continue to support the strengths, choices, autonomy, and integrity to supporting individuals with I/DD. The National Association of State Directors of Developmental Disabilities Services (NASDDDS) affirmed a similar position [opposing aversive interventions and promoting positive behavior supports in 2015](#). Any revisions to Article 9 should affirmatively reject the use of interventions that have the potential to cause pain and harm, whether physical or psychological.

Diedre Freedman, District West IOC Chair

## **ADDENDUM #2: ABUSE AND NEGLECT (CHAPTER 64)**

### **QUESTIONS SUBMITTED TO DDD REGARDING ABUSE AND NEGLECT (CHAPTER 64)**

*From District Central Independent Oversight Committee*

The training material for Instructors and Providers was sent out for Public Comment, and per Chapter 64 of the Policies manual, MAY be used to teach the concepts. The training material/curriculum for Members did not go out for Public Comment, and per Chapter 64 of the Policies Manual, states that the material MUST, not MAY, be used. The training material/Curriculum referred to is found in on the DDD Website under the heading "Abuse and Neglect".

Why did the training material for the Members NOT go out for Public Comment?

Why is the curriculum for the Instructors and Providers different from the curriculum for the Members?

Who will teach the curriculum to the Members in the DTA setting, per Chapter 64, if the Member is dually enrolled in a group home and DTA? Is that instructor qualified to deal with the possible damaging psychological effects this training may have on the Member, based on possible past experiences of abuse or neglect?

If the Member is a visual learner, rather than an auditory learner, could the slides present an impression that is not intended? For example, is biting one's arm acceptable behavior? Is putting one's hand on (especially) the private, personal areas of another's body acceptable behavior? If the member is not able to express what the slides are conveying to him/her, how can the Instructor correct that misconception?

What is the Opt-in/Opt-out process for Members?

If a Responsible Person (IE Guardian) is involved, does that person have prior knowledge from DDD that this curriculum is being taught to the Member for whom they are responsible? What is that process of informing a Responsible Person, since what is being taught to the Member did not go out for Public Comment?

If the Member is responsible for himself, what is the process for him/her to opt in or out without actually viewing the material before it is presented?

With the inclusion of over 100 slides, the time it would take to review the material is too long for most Members. What is the plan to divide this up?

Have you considered that doing this in the DTA setting could provide an atmosphere of exclusion if the Member opts out of this Instruction?

Since this is to be reviewed annually, per chapter 64, does the Opt-in, Opt-out take place every year? Because of the sensitive nature of the curriculum, should that document be included in the Planning Document/Person Centered Plan?

### IOC QUESTIONS; DDD RESPONSES; IOC QUESTIONS TO DDD RESPONSES ABUSE AND NEGLECT (CHAPTER 64)

Key: **Bold/Black: Original IOC questions:**

Blue: Responses from DDD

- *Italicized Bullet points: IOC responses to DDD answers*

The training material for Instructors and Providers was sent out for Public Comment, and per Chapter 64 of the Policies manual, **MAY** be used to teach the concepts. The training material/curriculum for Members did not go out for Public Comment, and

- **per Chapter 64 of the Policies Manual, states that the material MUST, not MAY, be used. The training material/Curriculum referred to is found on the DDD Website under the heading "Abuse and Neglect".** The Division determined that we would help offset costs to deliver abuse prevention training after receiving public feedback about the amount of time and resources that Qualified Vendors would need to expend to implement. For this reason and to ensure that members were offered consistent training, we determined that we would require one training curriculum for all members. Members are NOT required to take the training.
- *The question had nothing to do with how providers were being paid to train staff. We understand the premise behind consistency in training content but many members will not understand the content the way it is presented in the MUST use material*
- **Why did the training material for the Members NOT go out for Public Comment?**
  - **Response:** The original posting of Chapter 64 had a summary version of the training-although it's not required that DES DDD get Public feedback for training. The Division needed to get the source documents from

Massachusetts and then update them to align with Arizona laws and rules and to brand the DES logo etc. This occurred after the original posting and took some time. **We** determined that it was in the best interest of the community to make the training available after the formatting was completed. **We** plan to provide a process to gather additional public feedback once vendors have provided the training for a full year.

- *With the importance of this material, more than a summary should have gone out. Why would DDD not want feedback on this? Is it within the law that a summary is adequate for Public Comment, or must it be the document in its entirety? Did anything ever come back from someone with knowledge of law?*
- *Training (Methodology) vs Curriculum (Content): Mincing words: Training on how the curriculum (Chapter 64) does not need Public Comment. The Curriculum (Chapter 64) needs to go out for Public Comment.*
- *NON-RESPONSIVE ANSWER: Why did the material for Members NOT go out for Public Comment?*
- *Cost effectiveness: cheaper to do it this way...Offensive...individual needs are not being met due to cost...???*
- *“WE DETERMINED” THAT IT WAS IN THE BEST INTEREST OF THE COMMUNITY...WHO IS “WE”...SENSITIVE STUFF...NOT OK...WHERE ARE THE COMMUNITY GUIDELINES? SOME KIND OF PUBLIC DETERMINATION.*
- *STEWARDS OF THE MONEY...WHERE WAS PUBLIC INPUT RE THIS VERY DEFINITIVE SEX ED TRAINING?*
- *DID AHCCCS REVIEW THIS?*
- *ABUSE AND NEGLECT COMMITTEE NEVER OK'D THIS ACTION (per two members of that committee)*
- **Why is the curriculum for the Instructors and Providers different from the curriculum for the Members**
  - *Response: This member training was one that was recommended by the Sexual Violence & I/DD Collaborative chaired by the ADDPC. Awareness and Action was developed in Massachusetts (MA) by and for self-advocates.*
  - <https://disabilityinfo.org/records/awareness-and-action-aa/>
- *Responsible Person/Family Members should be involved in approving curriculum, i.e. the need for Public Comment*
- *There is only 1 DDD Member on the ADDPC committee and he works full time, and does not represent the majority of Members served by DDD. The training is for members that participate in DTAs and live in group homes. The training is not reflective of the member's abilities that participate in the 2 targeted programs/services.*
- *IF A MEMBER LIVES AT HOME, BUT ATTENDS A DTA, IS HE REQUIRED TO TAKE THE MATERIAL?*
- *WHERE IS CULTURAL DIVERSITY SENSITIVITY?*
- *NO PRE-TEACHING*
- *NON-RESPONSIVE ANSWER: Why is the material different for Providers and Members?*

NO PROBLEM WITH PROVIDER CURRICULUM...THE WAY YOU PROTECT THE MEMBERS IS BY TRAINING THE STAFF: IF THE ADULTS IN THE ROOM ARE TRAINED THEY CAN PROTECT THE MEMBERS THROUGH THIS TRAINING.

- **Who will teach the curriculum to the Members in the DTA setting, per Chapter 64, if the Member is dually enrolled in a group home and DTA? Is that instructor qualified to deal with the possible damaging psychological effects this training may have on the Member, based on possible past experiences of abuse or neglect?**
  - **Response:** Chapter 64 requires the DTA to offer the training and if the member does not attend a DTA, then the Group Home provider offers the training. Members and guardians decide if they want to take the training or not. The vendor determines who does the training but there is a comprehensive instructor guide and a participant guide posted. We understand that not all training is going to be a fit for all individuals.
- **BE A FIT FOR ALL INDIVIDUALS.** In the response to the first question the reply was “we determined that we would require one training curriculum for all members.” Confusion: If DDD determined, with the support of ONE person from a disability advocacy organization, no matter how little he had in common with those for the whom the training is being provided, why is it appropriate to only offer 1 training instead of meeting the needs of the specific members abilities?
- *“Not all training is going to be a fit for all individuals.”*
- *One size does not fit all in the DDD world. This seems to be an admission that the curriculum needs to be individualized per the member who participates.*
- *See Member Bill of Rights, Letter O: “Right to express human sexuality and receive appropriate training;” This is violating the Member Bill of Rights, as this is not appropriate training for all Members.*
- *NON-RESPONSIVE ANSWER: How will one know if psychological damage is or has been done? Professionals trained in the DDD population and psychiatry need to be involved.*
- *TRAINING VS CURRICULUM...need to be consistent is whether referring to the Training of the Curriculum or the curriculum itself (the content)*
- *18 YEAR OLD (STAFF) TEACHING THE CURRICULUM????? INSTRUCTOR NEEDS TO BE EXPERIENCED IN THE SUBJECT....*
- *THE MEMBER WILL WANT TO TALK ABOUT THEIR EXPERIENCE, BUT CURRICULUM DOES NOT ALLOW FOR THIS...NEEDS TO BE INDIVIDUALIZED...Who will the Member talk to? Again, is the listener qualified to have that discussion with the Member?*
- **If the Member is a visual learner, rather than an auditory learner, could the slides present an impression that is not intended? For example, is biting one’s arm acceptable behavior? Is putting one’s hand on (especially) the private, personal areas of another’s body acceptable behavior? If the member is not able to express what the slides are conveying to him/her, how can the Instructor correct that misconception?**

- o **Response** Members and guardians decide if they want to take the training or not. We plan to provide a process to gather additional public feedback once vendors have provided the training for a full year.
- *Feedback after 1 year is not acceptable: Results in possible traumatization of members for a year then collect the data on the traumatization? The only data being collected at this time is whether the Member took the course or not.*
- *The Responsible Person/Guardian needs to view the training material before the member participates in it. The only way to view the curriculum is on the website. The website is not user friendly, even for us that know how to access it. Does this mean that the Member is his own guardian that he will have to review the material before determining if it is appropriate for him, in order to participate in the course?*
- *What does the questionnaire for feedback include? Parents? Vendors? Members?*
- *From an IOC member's child (who is served by the Division): THE PICTURES DID NOT MAKE ANY SENSE. EXPLANATION NEEDED. NOT GOOD. COLORS: THE PEOPLE IN HER WOULD NOT UNDERSTAND RED IS STOP AND GREEN IS GO...*
- *WHERE IS THE PRETEACHING? (MEMBER)*
- **NON-RESPONSIVE ANSWER:** *Could the slides present an impression that is not intended? For example, is biting one's arm acceptable behavior? Is putting one's hand on (especially) the private, personal areas of another's body acceptable behavior? If the member is not able to express what the slides are conveying to him/her, how can the Instructor correct that misconception?*
- **What is the Opt-in/Opt-out process for Members?**
  - o **Response:** *The vendor offers the training and documents which members it was offered to. Members and guardians decide if they want to take the training or not.*
- *There is no required documentation for the member if he opted in or out. Can Providers put the names of all members on an Excel sheet, make a random announcement, and that is sufficient?*
- **If a Responsible Person (IE Guardian) is involved, does that person have prior knowledge from DDD that this curriculum is being taught to the Member for whom they are responsible? DDD: Vague question....**
  - o **Response:** *Yes. Members and guardians decide if they want to take the training or not.*
- *HOW IS DDD INFORMING THE RESPONSIBLE PERSON ABOUT THE TRAINING AND THE CONTENT? This SHOULD BE DONE THROUGH BLASTS, SNAIL MAIL AND BY THE DDD SCS AT EACH ISP MEETING. This is a DDD requirement. DDD should be the responsible for sharing the information with the Responsible Person/Guardian.*
- *There cannot be in "Informed Consent" (per Article 9) without knowing what the curriculum is.*
- **NON-RESPONSIVE ANSWER:** *How can there be Prior knowledge? Did not go out for Public Comment and yet it is in Policy.*

- **What is that process of informing a Responsible Person, since what is being taught to the Member did not go out for Public Comment?**

- o **Response:** The staff (Recognizing and Reporting Abuse, Neglect and Exploitation of Vulnerable Populations and member (Arizona Awareness & Action - Recognizing, Reporting and Responding to Abuse, Neglect and Exploitation) training curriculum are posted to the DES DDD website.
  - o <https://des.az.gov/services/disabilities/developmental-disabilities/vendors-providers/current/training>
- *NON-RESPONSIVE ANSWER: How can there be Prior knowledge? Did not go out for Public Comment and yet it is in Policy.*
- *HOW IS DDD INFORMING THE RESPONSIBLE PERSON ABOUT THE TRAINING AND THE CONTENT? This should be done through NEWSLETTERS, blasts, snail mail, and by the DDD Support Coordinators at each Planning Document/Personal Centered Plan Meeting. This is a DDD requirement. DDD should be responsible for sharing the information with the Responsible Person/Guardian.*
- *MOST OF WHERE I LIVE IS NOT WIRED FOR INTERNET. THIS DOES NOT WORK.*
- *CULTURAL SENSITIVITY AND DIVERSITY.*

- **If the Member is responsible for himself, what is the process for him/her to opt in or out without actually viewing the material before it is presented?**

- o **Response:** Qualified vendors should share information about what the training covers. Members and guardians decide if they want to take the training or not. They do not need to opt out.
- *NON-RESPONSIVE ANSWER:  
Since, PER ARTICLE 9, consent is required. In order to obtain written consent, all relevant information would need to be provided, which in this case is the training. In order to get consent from a member who is his own responsible person, PER Art 9, the Member would need to see the training. Circular logic but that is what would need to be done to comply.*
- *Regarding the last sentence, "They do not need to opt": Would a provider need to really do anything besides provide a list of members to DDD as verification that the class was offered, since they do not need to know who opts out?*
- *There cannot be "Informed Consent" (per Article 9) without knowing/VIEWING what the curriculum is.*
- *DDD should provide a standardized form for Members to opt-in/Opt-out. District Central IOC has seen 4 different permission forms from 4 different Providers. Each is different, each protects the Member and/or the Provider in different ways. One gave very detailed account of content, one merely mentioned the location on the DDD website, with the other two somewhere in between. DDD should be responsible enough to provide protection from all liability for everyone involved, including the Member.*
- **With the inclusion of over 100 slides, the time it would take to review the material is too long for most Members. What is the plan to divide this up?**
  - o **Response:** Vendors are to offer and provide this during routine service delivery (for example as part of the structured day programming) so they can offer the training in multiple sessions to fit member needs.

- *In a normal slide presentation, with discussion, the time allotment is about 1-2 minutes per slide. Knowing the training would need to typically be broken into 30-45 minutes per training, with the possibility of covering one slide every 4-5 minutes, this course could possible take: (session @ ½ hour @ 5 min slide= 6 slides per session = Seventeen 30 minute sessions. Finish up the course, if divided equally, at the end of the year...just in time to begin again. Why must this be taught annually? Is this annual renewal required for the Providers as well?*
- *Trauma from past incidents could result in behaviors and/or chaos in the middle of the presentation. Needs to be individualized, per Members Bill of Rights, letter O. "Right to express human sexuality and receive appropriate training;"*
- *NON-ANSWER: DDD is leaving this up to the Provider/Vendor. Again, needs to be individualized.*
- ***Have you considered that doing this in the DTA setting could provide an atmosphere of exclusion if the Member opts out of this Instruction?***
  - *Response: Members choose activities in Day Services that they want to do. This means often groups of members getting day services participate in different activities. This follows the same principle.*
- *But, if it is a responsible person, other than the member that is choosing for the Member to participate in the training, that takes away the Member choosing what they want to do at the DTA! SO yes, it is exclusionary. (If a Member's friends are all in the media room watching slides, and he is not allowed, per Guardian, then yes, he will feel excluded. Lack of understanding; his group is participating in something he cannot participate in.) DTA Calendar is very structured: 1-2 items in the AM; 1-2 items in the PM, depending on Staffing, space, etc.*
- ***Since this is to be reviewed annually, per chapter 64, does the Opt-in, Opt-out take place every year? Because of the sensitive nature of the curriculum, should that document be included in the Planning Document/Person Centered Plan?***
  - *Response: Annually, members and guardians decide if they want to take the training or not. Qualified vendors are required to maintain documentation of the offer. It's not currently required to be documented in the PCSP.*
- *Because of the possibility of being exclusionary, this should be listed in the rights section of the Planning Document/Person Centered Plan. Additionally, in the acknowledgement section of the Planning Document/Person Centered Plan, acknowledgement from the Responsible Person/Guardian/Member that the DDD SC informed the responsible person of the training and the content to qualify for "informed consent", per Article 9.*
- *Why should this be presented every year? Is that the requirement for the Providers/Staff?*
- *IF THIS IS SO IMPORTANT WHY IS IT NOT PRESENTED AT THE 90 DAY MEETING WITH THE MEMBER AND THE TEAM? ONE MEMBER HAS HAD 3 MEETINGS, SC WAS UNAWARE OF TRAINING WHEN GUARDIAN MENTIONED THE TRAINING. THIS IS THE PLACE WHERE TWEAKING CAN TAKE PLACE. NOT APPROPRIATE AT ALL.*
- *Could become a risk; should be listed on the risk assessment*
- *Ask for an interim report since it has been rolled out since July. Share data.*
- ***Refer to 41-3804 N:*** *If a committee's request for information or records from a department or service provider is denied, including an objection pursuant to subsection G of this section, and if requested by the committee, at least one representative of the department or service provider and at least one committee*

member shall meet and confer within five business days after the date of the request or on a later date that is agreed to by both parties and shall in good faith attempt to resolve the objection informally and cooperatively. After meeting and conferring, the committee may request in writing that the director of a department review this decision. The director shall timely conduct the review and, not later than twenty-one calendar days, after receiving the request for review, the director shall deliver to the committee a written decision explaining in detail the factual and legal basis and reasoning for the department's decision. The department shall bear the costs of conducting the review. A final agency decision made pursuant to this subsection is subject to judicial review pursuant to title 12, chapter 7, article 6. The department shall not release any information or records during the period an appeal may be filed or is pending:

- **41-3804 G**: Each committee shall submit written objections to specific problems or violations of client rights by the department or service provider through the director of the department of administration for review by the director of the department that is responsible for the client. The director of the department shall deliver to the committee a detailed written response to each written objection within twenty-one calendar days after receiving the objection from the department of administration.
- **Title 12: Arizona Laws > Title 12 > Chapter 7 > Article 6** – Judicial Review of Administrative Decisions



**DRAFT**  
**BENEFIT/COST ANALYSIS MODEL FOR**  
**ARIZONA SURFACE WATER PROTECTION PROGRAM**

[picture – selection pending approval]

Prepared for:

**Arizona Department of Environmental Quality**

P.O. # PO0000400338

**April 29, 2022**

**PREPARED BY**

**McClure Consulting LLC with The Natelson Dale Group, Inc.**

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## Introduction, study purpose and direction

ADEQ rulemaking requirements include establishing criteria for the economic, social and environmental costs and benefits for listing or delisting waters for state-level protection, and for setting standards for non-WOTUS and other waters of the state. Accordingly, this assignment is understood by the consulting team (Consultants) to focus on services pertaining to modeling the economic costs and benefits associated with decisions for adopting water quality standards<sup>1</sup> for non-WOTUS waters and other waters of the state, and for listing or delisting waters for protection within a new Surface Water Protection Program. A parallel consideration in this assignment is recognizing, in at least a qualitative sense, the social effects associated with waterbody actions. Appendix A, Rulemaking and BCA relationships, summarizes generalized rule-making requirements and related components of the benefit/cost analysis (BCA).

Pursuant to ADEQ's direction, the Consultants used a national study<sup>2</sup> published by EPA and the Department of the Army, which analyzed economic effects of changes in the definition of WOTUS, as a general framework for the Arizona-specific BCA model. The EPA document includes national and state-level costs as well as estimates for benefits, along with a proposed framework for evaluating benefits at smaller levels of geography. Whereas the ADEQ BCA model generally reflects the scope, methodology and data sources used in the EPA document, the EPA framework was adapted and supplemented by the Consultants to address the types of policy actions that are most likely to occur in Arizona. These adaptations are described in more detail in subsequent sections of this report.

To expedite the framework for the BCA with respect to this assignment, ADEQ identified three different "case study" classes of waterbodies that could involve designation as non-WOTUS protected surface waters, along with specific waterbodies to represent each class, as shown below:

Class 1 – Sky Island Stream. Representative Water – Stronghold Canyon, Cochise County

Sky Islands are isolated mountain ranges in southeastern Arizona. These mountains contain a number of perennial or intermittent surface waters that have no significant nexus to a traditionally navigable water. The streams will die out in the deserts surrounding the sky island but are still important components of Arizona's overall hydrology.

Class 2 – Isolated Lakes. Representative Water – Pintail Lake, near Show Low

Allen Severson Memorial Wildlife Area/Pintail Lake is known in abbreviated form as "Pintail Lake." This wildlife area is actually a man-made wetland created from treated wastewater, and is recognized nationally as one of the first of its kind in the country.

Class 3 – Ecologically, Culturally, or Historically significant water. Representative Water – Quitobaquito Pond, Organ Pipe Cactus National Monument in Pima County

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<sup>1</sup> The Consultants' understanding with respect to "standards" in this particular assignment is that standards can relate to a designation or other status of a waterbody but that modeling efforts addressed herein are not expected to include quantified changes in standards for specific contaminants or a quantified interpretation of any such changes in terms of benefits and costs. However, BCA modeling methods can be structured to recognize potential future measures and/or changes pertaining to standards.

<sup>2</sup> *Economic Analysis For The Proposed Revised Definition of WOTUS Rule*. 2021. The study, referred to as "the EPA document" in this report, is a joint effort of the Environmental Protection Agency (EPA) and the Department of the Army.

As a part of Organ Pipe Cactus National Monument, the National Park Service, in 1961, removed all old structures from the Quitobaquito Pond site, drained and deepened the pond, and constructed improvements to accommodate visitors and help protect the area.

This report addresses the application of a BCA process using the three classes of waterbodies above, while also referencing conditions that could apply to Arizona waterbodies in general. The BCA model described in this report is included as a separate submittal to ADEQ in spreadsheet format. The model addresses all three case-study water bodies within a single modeling framework.

Subsequent sections in this report are titled as follows:

EXECUTIVE SUMMARY

WORKING WITH ANALYSIS GUIDANCE IN EPA DOCUMENT

CONSIDERATION OF OTHER BENEFIT/COST MODELING IN ARIZONA

WATERBODY CLASS-SPECIFIC CONDITIONS AND CONSIDERATIONS; BENEFIT/COST CATEGORIES IN ANALYSIS FRAMEWORK

MODEL PROCESS AND STRUCTURE

SOCIAL BENEFIT/COST CONSIDERATIONS AND CATEGORIES RELATED TO WATERBODY ACTIONS

BCA MODEL SUMMARY RESULTS

A series of Appendices are also attached, addressing various technical issues.

## Executive summary

The three case-study waterbodies provide a contrasting and otherwise informative set of examples by which to illustrate various aspects of how the BCA model is structured, the influence of the surrounding population base, the range of results generated, and the sensitivity of these results to certain basic data variables. In addition to a quantitative analysis based on the data available for various cost and benefit factors, the model incorporates a framework for addressing additional, qualitative aspects of a BCA for Arizona waterbodies. These qualitative components add context to the quantified portion of the BCA and reflect potential elements of a BCA that could be considered for quantitative treatment in some later iteration/refinement of the modeling process. Including these qualitative discussions also helps illustrate certain limitations in the current modeling process.

The quantitative elements of the BCA model synthesize the following types of information:

- Key characteristics of the three case-study waterbodies for which the BCA process will be performed and which influence the application of various cost and benefit factors.
- Number of households within “local” and “non-local” areas with respect to each of the three case-study waterbodies – defined as 50-mile radius rings and 100 to 150-mile outer ring “donuts,” for local and non-local areas, respectively, to which benefits factors are applied. Other demographic data were also assembled for each waterbody’s local area for purposes of environmental justice considerations.
- Quantified cost and benefit factors to apply to the waterbodies and to the households in the two types of analysis areas.
- Factors for updating cost and benefit estimates derived (by others) in preceding years and for discounting streams of costs and benefits estimated to occur over a subsequent 20-year period.
- Cost and benefit totals for each waterbody, and the ratio of benefits to costs.
- Demographic conditions applicable to Environmental Justice considerations, within each of the three local analysis areas.

Qualitative aspects of the BCA are summarized in a series of tables that discuss the broad implications of additional benefit and cost categories not quantified in the current model, Environmental Justice observations based on the quantified demographic data, and the sensitivity of model results to various quantified variables, including how results compared to certain Arizona-specific cost and benefit estimates in the EPA document.

Summarized quantified benefit and cost relationships for the three water bodies are shown in the following table. (Note that the willingness-to-pay (WTP) concept<sup>3</sup> is discussed in additional detail in subsequent sections of this report.)

Cost and Benefit Factors	Class 1 - sky island stream - Cochise Stonghold Cyn.	Class 2 - isolated lake - Pintail Lake & marshes	Class 3 - unique waterbody - Quitobaquito Pond
Size (acres or acre-equivalents (Class 1))	21.76	65.00	0.50
Forested?	Yes	Yes	No
<b>Costs and benefits over a 20-yr. period, discounted</b>			
<b>Costs</b>			
404 permits	\$9,344	\$9,344	\$9,344
Mitigation			
ADEQ Admin	\$62,641	\$111,067	\$74,938
<b>Total</b>	<b>\$71,985</b>	<b>\$120,411</b>	<b>\$84,282</b>
<b>Benefits, from willingness-to-pay (WTP) factors</b>			
Local	\$5,509,181	\$7,840,675	\$3,151
Non-local	\$8,635,112	\$54,780,036	\$4,066
<b>Total</b>	<b>\$14,144,293</b>	<b>\$62,620,711</b>	<b>\$7,216</b>
Arizona component	\$14,982,646	\$68,136,424	\$8,045
<b>Benefit/cost comparison</b>			
Total benefits, Arizona	\$14,982,646	\$68,136,424	\$8,045
Total costs	\$71,985	\$120,411	\$84,282
Benefits/costs (first number in ratio: __ to 1)	208.1	565.9	0.10

Affected populations (number of households) within local and non-local areas of the three case-study areas are shown below.

Affected households	Cochise Stonghold	Pintail Lake & marshes	Quitobaquito Pond
Local: Current	72,184	47,219	6,934
Local: Projected	74,867	47,718	9,483
Non-local: Current	986,121	2,089,641	61,461
Non-local: Projected	1,263,692	2,688,637	95,823
<b>Total Local and Non-Local</b>			
Current	1,058,305	2,136,860	68,395
Projected	1,338,559	2,736,355	105,306
Arizona component	1,319,865	2,700,399	105,306

<sup>3</sup> As described in more detail later in the report, willingness-to-pay (WTP) is a common measure for economic valuation of non-market goods (such as protected waterbodies). WTP is essentially the dollar amount a household within a waterbody's impact area would be willing to pay (on either a one-time or annual basis, depending on how the analysis is framed) to protect the waterbody.

Of the three case-study waterbodies, Stronghold Canyon and Pintail Lake both have benefit/cost ratios well in excess of 1. Quitobaquito Pond has the opposite condition – a very low B/C ratio, of 0.1. This very small waterbody was assigned a small area for non-local affected households, compared to the other cases, and the populations in both local and non-local areas are particularly small due to the remoteness of the waterbody. consequently, minimal benefit values were generated in the model partly due to those conditions. A more meaningful issue, however, is that the “willingness-to-pay” (WTP) approach to estimate benefits does not encompass a way of capturing the value for the vital role of the pond in protecting rare and endangered species.

The EPA document includes figures for Arizona that represent annualized costs and benefits over a 20-year projection period, based on their estimates of average annual increases in wetland acreage that would receive protected status or other attention. With this information, it is possible, in theory, to compare the EPA findings with the results of the ADEQ BCA model, on a per-acre and/or per-household basis. The cost components of the BCA model with respect to the three case study waterbodies are understood to be, perhaps, atypically minimal, given the somewhat protected nature of the three waterbodies and their physical settings. On a per-acre basis, the EPA cost figures for Arizona are considerably higher. Benefit factors per-household and per-acre in EPA are also considerably higher than what is reflected in the BCA model. To some extent, this could be based on how EPA allocated varying benefit amounts by waterbodies’ settings, defined local versus non-local populations, or other factors in their modeling process that are not replicable by the Consultants. Regardless of such effects, one conclusion from this comparative review is that the BCA model results are conservatively derived.

Based on the discussions in this report concerning the EPA approach to quantifying benefits, and the Consultants’ use of benefit factors for the BCA model derived from a study relied upon heavily by EPA in their document, the Consultants do not recommend at this time an upward adjustment in the model’s benefit factors based on the comparison with EPA figures.

## Working with analysis guidance in EPA document

As noted above, a national analysis completed by EPA in 2021 was used as a framework or template for the Arizona-specific BCA model. In addition to including specific data resources relevant to the Arizona model, the EPA document provides insight into the conceptual foundations for this type of analysis.

Benefit/cost analysis for environmental protection policies is inherently challenging due to the “non-market” nature of many environmental resources. Whereas the *costs* of environmental regulation tend to be readily quantifiable (or at least reasonably estimable) by the affected parties, the *benefits* often relate to “goods and services” (e.g., clean recreational water and healthy fish populations) that are not traded in markets and therefore are not subject to market-based pricing.

Since the economic value of non-market environmental resources – how much the public would be willing to pay for them (or to improve their quality) – is not revealed in market prices, academic economists have developed a variety of methods for valuing non-market goods. In practice these valuation techniques have been applied in a wide range of circumstances where it is desirable to quantify resource values in dollar terms. Although the conceptual validity of these valuation methodologies is recognized (and sometimes also called into question) in academic, legal and policymaking contexts, in practice they are often costly and procedurally challenging to correctly apply, are difficult for the public to understand, and are subject to wide variations in resulting benefit values.

Given these challenges, the concept of **benefit transfer** (BT) – deriving benefit values from previously completed studies and applying them in new but similar contexts – has substantial appeal to public agencies faced with the need to complete a diverse range of benefit/cost studies. The concept was applied in the EPA document cited above. However, this approach comes with challenges of its own, including finding case studies that align with the local policy under consideration.

In addition to the specific challenges associated with BT studies, environmental BCA’s in general are subject to the following key complexity: The need to distinguish between the total value of a resource versus the marginal value of an incremental change in that resource. Similarly to the approach taken in the EPA document that is key to this assignment, BCA studies frequently focus on the total value to society of a particular environmental resource in a particular region (e.g., the total value of protecting recreational waters in a particular state or county). This information can be useful for benchmarking purposes, but it has a somewhat different purpose from the types of questions that ADEQ needs to address within its economic modeling process, which is focused on the effects of designating a specific water body to one category or another (or possibly to incremental changes resulting from a specific change in a specific water quality standard).<sup>4</sup>

Partly in response to the analytical challenges summarized above, ADEQ requested, for purposes of this assignment, that the Consultants follow the benefit and cost estimating procedures outlined in the EPA document cited above. This approach offered the following three types of advantages:

1. The EPA document reflects acceptance of both a) the sometimes-contentious BT approach to estimating benefits related to waterbody decisions, and b) the “bounds,” at least for now, of the categories of benefits and costs to apply to waterbody benefit/cost analyses in Arizona;

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<sup>4</sup> Consistent with the EPA document on which the Arizona BCA framework is based, the initial BCA model developed by the Consultants focuses primarily on impacts associated with overall protection of waterbodies; it does not address the effects of specific water quality standards. However, references to water quality standards are included in this report as “placeholders” for potential future augmentations of the ADEQ model to address a broader range of water protection policies.

2. The document summarizes very recent analytical decision-making by EPA (which is generally comparable on a national scale to the types of actions Arizona may enact at the state level); and
3. Use of this material provides ADEQ with defensible frameworks for analyses conducted for waters of the state.

Applying the material in the EPA document also required some interpretation by the Consultants. First, the nationwide and state-by-state approaches that EPA takes in its analyses must be understood in terms of how they apply to individual waterbodies within any particular state. Within the EPA document, the cost analysis is limited to public and private costs associated with the Section 401 program.<sup>5</sup> In particular, three categories of costs are addressed: a) administrative costs to the affected state agency for Section 401 reviews; b) direct costs (to private permittees) of Section 404 USACE permits; and c) direct costs (also assumed to be borne by private permittees) of implementing mitigation measures required under Section 404 permits. Costs are quantified at the state level for the 404 program, based on estimates of the number of permits that would be generated by changes in definition of waters, and then the direct costs (to permittees) of permits and related mitigation measures, and also additionally related administrative costs to the State (401). EPA provides information on cost estimates related to the 404 program, and this information is used within ADEQ's BCA modeling framework under the assumption that the cost estimates on a per-unit (or per-permit) basis would be generally applicable to Arizona, even if the programs are not administered by the state. As with the stream of benefits over time, costs incurred in future years are discounted to the present.

These cost factors may be minimally relevant to the three case study examples (or to other types of water protection policies for which ADEQ needs to prepare a BCA). Since one of the case study sites is within a national monument, one is a relatively isolated mountain stream, and one relies on treated wastewater, activities requiring a Section 404 permit would be unlikely or very limited in these areas irrespective of changes in the definition of waters. Nevertheless, the concepts and approach described above are reflected in the BCA model in limited amounts, and can be applied to Arizona waters generally. (As documented elsewhere in this report, the default cost factors derived from the EPA document have been supplemented by Arizona-specific data supplied by ADEQ. These data encompass ADEQ's administrative costs for a wide range of rulemaking activities [see Appendix D] – beyond the EPA's limited focus on the Section 401 program.)

### The relationship of the BCA model to EPA methodology for the treatment of costs and benefits accruing over time

In the EPA document, “annualized” costs (per-household and total) were produced for each state based on an assumed number of permits per wetland acre (and with an assumed annual increase of permits and acres), with costs projected over a 20-year analysis horizon. Benefits were treated similarly, incorporating estimates of the number of households within a “local” (as opposed to non-local) relationship to the universe of a state's (annually increasing) wetlands. The 20-year “cash flows” of both costs and benefits were then discounted to a present value, and subsequently converted to an annualized figure – expressing that “bundle” of costs and benefits over 20 years as a year-by-year amount. The annualizing process makes sense as a way to normalize findings within a system-wide analysis (where protective policies are likely to be applied to a number of new sites/projects in a given year), such as that applicable to an entire state and then a series of states, extending over some period of

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<sup>5</sup> Under Section 401 of the Clean Water Act (CWA), a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a Section 401 water quality certification is issued, or certification is waived. States and authorized tribes where the discharge would originate are generally responsible for issuing water quality certifications. In cases where a state or tribe does not have authority, EPA is responsible for issuing certification.

time.<sup>6</sup> When dealing with individual projects, within the framework of the ADEQ BCA model, the discounting of future cost and benefit payments and receipts to present values continues to be relevant, but the annualizing process is unnecessary.

The ADEQ BCA model incorporates the 20-year period used by EPA (a reasonable cost and benefit time horizon related to individual projects), as well as the EPA's assumed 3% discount rate, which is appropriate for representing a household's trade-off of present and future dollars, without consideration for inflation.<sup>7</sup> (The discounting concept applied here is the same as in any financial analysis, where the intent is to recognize that dollars/benefits received, or costs incurred, in the future are worth less to the affected party than if those things happened in the present.) In this regard, cost and benefit figures over time are expressed in the ADEQ model in 2022 dollars, with no increase due to inflation.

## Estimates of benefits based on a Benefits Transfer approach

The EPA report focuses on assigning monetary values to benefits associated with wetland expansion/preservation, specifically through a meta-analysis of multiple wetland valuation studies that together provide insights into estimates of the public's willingness-to-pay (WTP)<sup>8</sup> for wetland preservation, using a BT (benefits transfer) approach.<sup>9</sup> The nature of this type of meta-analysis combines many different conditions and considerations, which are specific to each study's location, wetland conditions, study vision, etc. and so results tend to vary among the series of studies analyzed. The derived estimates can then be both generalized and also viewed in terms of the influence of the differing various individual conditions on monetary valuation. The Consultants applied various procedures to reinterpret the WTP findings presented in the EPA document (as well as the source study that EPA relied heavily upon to produce the WTP estimates – Moeltner et al.<sup>10</sup>), and incorporated them into the ADEQ BCA model. The following conditions were key to this reinterpretation process:

1. Moeltner (2019, Table 5), produced actual dollar amounts of willingness to pay per household, per acre, for each of four key types of wetlands contexts, for which meaningful differences in households' WTP were identified in the study analysis (shown in order of most to least WTP amount): 1) Local, forested, 2) Local, non-forested, 3) Non-local, forested, and 4) Non-local, non-forested.
2. EPA used the same four categorical distinctions in their generation of state-level estimates of WTP (EPA document, Appendix C, page 126, with amounts shown in Appendix D) but did not publish the actual figures.

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<sup>6</sup> When dealing with individual projects, within the framework of the ADEQ BCA model, the discounting of cost and benefit streams over time is relevant, but annualizing the discounted amounts serves no particular purpose, since there is no system-wide comparison to consider, but rather the cost and benefit relationship for a particular waterbody (in which case the annualizing process is conceptually confusing). The EPA figures do, however, provide an estimate of total benefits for the state (expressed in terms of the dollar amounts the public would be willing to pay for specified annual acreages of wetlands protected), which can serve as a way to compare the estimates produced by the ADEQ BCA model.

<sup>7</sup> The EPA document also gives figures using a 7% discount rate.

<sup>8</sup> Given the non-market nature of environmental "goods" (such as protected wetlands and waterbodies), willingness-to-pay cannot be observed through normal market metrics (i.e., prices). As such, economists have developed various methodologies for measuring WTP for non-market goods, including survey methods ("contingent valuation") in which the public is directly queried about WTP for the protection of specific environmental resources.

<sup>9</sup> Under the BT approach, WTP estimates from previous studies are "transferred" to new analyses and policy decisions. Since the contexts for the resources evaluated in the previous studies are usually not exactly comparable to the resources/setting being evaluated in the new analysis, BT analyses rely on regression analyses to define the specific variables that influence the public's WTP for a particular resource. This regression analysis is intended to allow the data from the previous studies to be meaningfully applied in other contexts.

<sup>10</sup> Klaus Moeltner et al. Waters of the United States: Upgrading wetland valuation via benefit transfer. *Ecological Economics*, 164 (2019).

3. The database EPA used to generate their numbers was very similar to that used in the Moeltner study, except for being supplemented by seven additional cases generated within two Canadian studies.
4. Other variables within the regression formulas used in both the Moeltner and EPA studies, representing benefits such as recreation (“cultural”) and fish consumption (“provisioning”), as well as variations in household income, could in theory have been treated similarly to the four contextual conditions named above, i.e., by analytically distinguishing their contribution to the overall WTP amount. This could help refine WTP estimates as they relate to specific waterbodies. However, on closer examination of the regression results from the meta-analysis, such distinctions could not be justified on the basis of statistical validity of the individual variables of interest in the estimating equation.

Based on the preceding discussion, the Consultants adopted the approach represented in point #1 above, using the Moeltner-study values produced for the four household-location contexts as inputs for the BCA model. This approach captures the major distinctions in WTP estimates as they would apply to specific cases. The Consultants acknowledge, however, that the figures derived as described above and used in the present BCA model should be considered “placeholders” for future refined WTP estimates for Arizona waterbodies. These estimates would be derived either through new, ideally Arizona-based studies set up specifically for this purpose, or through additional/expanded meta-analysis work if and when additional studies become available. These later analyses could also generate supplemental data to support expanded distinctions within WTP estimates, pertinent to other specific benefit categories of interest (beyond the four household-location distinctions adopted from EPA), such as various forms of recreation.

There are other possible ways to interpret and adapt the WTP findings of the EPA document to the BCA model. For example, the individual studies that were used in the meta-analysis to derive EPA’s WTP estimates could be reviewed to reselect one or more studies or sets of studies that would appear to apply more directly to Arizona conditions and any specific variables of particular interest. The findings from the most appropriate study or studies would then be analyzed, recorded and applied to the model. However, because one of the main reasons for the meta-analysis is to purposefully combine results from many different studies (and generally, the more the better), which also lessens the chance for any one study to overly influence the results, paring down the group of studies analyzed works against this advantage. Also, these kinds of studies (addressing individual waters) are particularly sensitive to details of how they were structured, how questionnaires<sup>11</sup> were developed and administered, and the contextual relationship between waterbody and the interview subjects. Lacking a first-hand knowledge of these kinds of things adds uncertainty to the “transferability” of findings from any particular WTP study. One other issue is the potential for conveying a sense of confidence in a WTP estimate, through the kinds of manipulations described above, when the underlying data and processes still fall short of providing a strong statistical foundation.

Finally, for purposes of this assignment, certain waters of the state, including one of the case study examples, may not necessarily meet the official (federal or Arizona) definition of “wetlands.” – which are the exclusive focus of the EPA’s benefits analysis. Nevertheless, the value of a wetland to the public is assumed to be similar enough to the case study situations, and other potentially affected waters in Arizona, to allow the use of EPA’s benefit modeling procedure (adapted as noted herein) to derive Arizona estimates. A key point of this is that EPA, and the Consultants initially by default, are dealing with two different, even if overlapping, broad classes of waters,<sup>12</sup>

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<sup>11</sup> As noted previously, valuation studies for non-market environmental goods often rely on direct surveys of the public to assess WTP for contemplated environmental improvements. The structure of the questionnaires for these surveys is critical to the usefulness and statistical validity of the derived responses.

<sup>12</sup> From *Supplementary Material to the Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule*. U.S. Environmental Protection Agency and Department of the Army. November 18, 2021. [Part] E. ARIZONA (page 6). Definition of Waters of the State: All waters within the jurisdiction of the state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems,

*definitionally*: for costs (any jurisdictional water) and for benefits (wetlands, again by default based on the BT meta-analysis EPA used to derive its estimates in the EPA document).

## General limitations and other reinterpretations of EPA’s benefit and cost treatments

### Benefits

EPA acknowledges certain limitations in its relatively constrained approach to identifying benefits resulting from protecting the quality of water. Moreover, a specific/individual waterbody being evaluated may provide unique environmental and economic benefits beyond the EPA-calculated values for “typical” wetlands. Topics EPA mentions as left unaddressed<sup>13</sup> include: the benefits of wetland carbon sequestration, the ability of wetlands to help allay the future effects of climate change, such as severe weather events, and the ability of wetlands to reduce soil erosion and retain flood waters (p. 86). Further, it should be emphasized that the EPA document – which exclusively addresses the benefits associated with protection of *wetlands* – specifically does not address benefits associated with drinking water standards.

### Costs

Cost considerations mentioned in the EPA report (*but not quantified* except for 401-related costs as they relate to the 404 program) are summarized in the following statement:

“The definition of ‘waters of the United States’ has a substantial effect on the implementation of other Clean Water Act (CWA) programs, including the section 303(c) water quality standards program, the section 311 oil spill prevention program, the section 401 water quality certification program, and the section 402 NPDES permit program. A revised definition of ‘waters of the United States’ would affect these CWA programs at both the federal and state level. Potential effects may vary based on a state’s authority under their own state law to address aquatic resources and their capacity to address these aquatic resources through non-regulatory efforts” (EPA document Executive Summary page xiv).

In general, however, certain costs of implementing environmental protection policies tend to be more readily quantifiable than the benefits, in part because some costs are typically experienced as administrative costs to regulatory agencies and direct “out of pocket” expenses by affected/regulated parties who are often in a position (in terms of access to internal proprietary business data, etc.) to accurately estimate these cost impacts.

## Consideration of other benefit/cost modeling in Arizona

### Overview

At ADEQ’s direction, the Consultants reviewed a series of Arizona-related documents within ADEQ’s developing on-line library. Among the purposes to be served through this review was to recognize the potential contribution that other economic analyses conducted for programs of interest to state agencies could have for the BCA format (present and future) for Arizona waters. Items noted as having “future” applicability are not included in the

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drainage systems, and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state. Definition of Wetlands: An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.

<sup>13</sup> In one discussion stating that they “omit known sources of benefits that are inherently difficult to quantify” (EPA document, p. xi).

present BCA model, but are listed here as topics that could be added later to expand the scope and enhance the overall functionality of the model. These findings are summarized in Table 1 below. The annotated bibliography resulting from this analysis is attached as Appendix B.

**TABLE 1. OTHER ARIZONA STUDIES WITH POTENTIAL BCA APPLICATION, PRESENT AND FUTURE**

BCA topic	# <sup>a</sup>	Potential applicability to benefit/cost estimating procedures	Present/future
Translating BCA findings on direct effects to secondary benefits and costs	2	Uses IMPLAN system to translate <i>direct</i> economic effects of some action into <i>secondary</i> effects, reflecting the multiplier effects of actions through the economic system. The practice represented by this modeling tool, widely used in economic impact assessments, would be a logical eventual extension of cost and benefit estimating for Arizona waterbodies	Future
B/C factors related to unique waterbody	3	Guidance on identifying factors that need to be considered in comprehensive economic analyses related to a unique water designation (Buehman Canyon Creek)	Present
Benefits related to spending by recreationists	4, 5	Both studies provide some quantified data for visitor expenditures. The reference cited for document #4, entitled " <i>The 1987-1988 Use Study of Arizona State Parks Visitors</i> ," for the Arizona State Parks Board in 1989, provides an additional relevant data	Future and potential present <sup>b</sup>
Visitor expenditures related to birdwatching and riparian environments	7	Tracking how visitor spending distributes within a finite region of natural attractions; potential to help define affected areas (Southeast Arizona)	Future and potential present

a. Document reference number, as per Appendix B.

b. It may be appropriate, for some waterbodies that are strongly associated with, for example, a specialized recreational activity, to incorporate analyses related to such activities, where data and findings have been articulated in previous studies. In such cases, the potential for double-counting must be recognized, if a multi-factor analysis tool is also in use. See Table 3.

## Other BCA considerations including evolving BCA concepts

ADEQ might consider, for future BCA studies, focusing on the potential impacts of an *individual policy variable* (e.g., a proposed change in a single standard for a specific contaminant). This makes sense from a policy standpoint but does not necessarily align with the way that the public/consumers think about the value of water quality. For example, rather than thinking of a single water quality standard in isolation, consumers are likely to think of "good" or "safe" drinking water as a "package" based on multiple standards and qualities. Moreover, the availability of previous studies from which a BT analysis could be constructed is likely to be limited for specific contaminants/topics.

Conceptual issues that are likely to continue into the future include the fact that there are "camps" of proponents of alternate ways to think about environmental benefits and costs. These groups tend to frame the issue broadly, for example by using the term "ecosystem services" to help emphasize the comprehensive nature of this topic. Proponents of different concepts also invent new terminology. For example, "nature-based solutions," and "nature's contributions to people."<sup>14</sup> As the authors of this cited work point out, these concept titles, with their

<sup>14</sup> Hayley Stevenson, Graeme Auld, Jen Iris Allan, Lorraine Elliott, and James Meadowcroft. The Practical Fit of Concepts: Ecosystem Services and the Value of Nature. *Global Environmental Politics* 21:2, May 2021, [https://doi.org/10.1162/glep\\_a\\_00587](https://doi.org/10.1162/glep_a_00587). Massachusetts Institute of Technology. Downloaded from [http://direct.mit.edu/glep/article-pdf/21/2/3/1911391/glep\\_a\\_00587.pdf](http://direct.mit.edu/glep/article-pdf/21/2/3/1911391/glep_a_00587.pdf) on 10 June 2021.

different shades of meaning around the same theme, can help define a theoretical concept even though they do not necessarily articulate a workable concept in terms of, for example, translating specific conceptual conditions to dollar values.

## **Waterbody class-specific conditions and considerations; benefit/cost categories in analysis framework**

Variations in conditions among the three case-study waterbody classes used in this analysis call attention to differing potential benefit and cost categories that could apply to each. Table 2 summarizes various conditions and categories of benefits and costs as they apply to the three cases. While Table 2 introduces the complexity of the variety represented by the three cases, Table 3 elaborates on how various cost and benefit categories begin to translate into an analysis framework, present and potential future.

**TABLE 2. BENEFIT AND COST CATEGORIES IN RELATION TO 3 CASE STUDY CLASSES**

	Case Study Classes		
	1. Stronghold Canyon	2. Pintail Lake	3. Quitobaquito Pond
<b>Conditions</b>			
Wetlands	This stream may be technically intermittent; for purposes of this analysis it is assumed to be <i>permanent</i> . The stream is estimated by ADEQ to be 3.59 miles in length. Based on an assumed buffer of 25 feet, both sides from center (per EPA), this stream length equates to 21.76 acres of protected wetlands	Pintail Lake and South Marsh (both artificial). Pintail is 3 ponds, 50 acres of water, and nesting islands; South Marsh fluctuates from 15 to 50 acres of flooded meadow and is a resting and feeding area. Water source is secondary treated effluent from City of Show Low.	½-acre pond, with spring
Natural environment context	Within Coronado National Forest <sup>c</sup>	Part of Allen Severson Memorial Wildlife Area, in Apache-Sitgreaves National Forests <sup>c</sup>	In Organ Pipe Cactus National Monument <sup>c</sup>
Other notable nearby visitor destinations	Wilcox Playa (wildlife viewing); Amerind Museum; ghost towns of Gleeson and Courtland, also Pearce (partially occupied)	White Mountains resorts and recreational assets; Fool Hollow Lake	Old mines and visitor improvements and other attractions within Monument; Sonoyta, Mexico
Cultural context	Uniqueness of “sky islands”; historic association with Cochise (Chiricahua Apache)	Developed in 1979 as the first waterfowl marsh utilizing treated wastewater in Arizona	Native American religious site; The Organ Pipe Cactus Biosphere Reserve, part of a UNESCO initiative to focus research and conservation efforts at certain locations
<b>Benefit Categories</b>			
Recreation, direct water:			
Fishing (recreational)	Assumed not applicable	Assumed not applicable	Assumed not applicable
FBC (swimming, other immersive)	Limited potential	Assumed not applicable	Assumed not applicable
PBC (partial-body contact, incl. boating)		Assumed not applicable	Assumed not applicable
Recreation, in area, direct or			

	Case Study Classes		
	1. Stronghold Canyon	2. Pintail Lake	3. Quitobaquito Pond
indirect assoc. with water:			
Birding (bird habitat)	X	X	X
Other wildlife viewing	X	X	X
Hunting	X	X	
Camping	X		Within National Monument
Hiking, Backpacking	X	X	X
Rock climbing	X		
Equestrian	X		
Habitat, aquatic	X	X	X
Habitat, wildlife (in area)	X	X	X
Habitat, special/rare and endangered species	None identified through review of named species in relevant webpages/documents	None identified through review of named species in relevant webpages/documents	Sonoyta mud turtle <sup>a</sup> ; Quitobaquito pupfish <sup>a</sup> ; Quitobaquito spring snail <sup>b</sup> ; Desert caper plant; Caper butterfly; Sonoran pronghorn <sup>a</sup> ; Lesser Long-nosed Bat <sup>a</sup>
Appreciative value, a.k.a. nonuse or passive use <sup>e</sup>	X	X	X
Fish consumption	?		
Local related or potentially related business community (local merchant receipts)	Businesses serving immediate area: Recreational, hospitality/retreat. Surrounding communities: Tombstone, Wilcox, Benson, Saint David, Sunsites	Surrounding communities: Show Low; Pinetop-Lakeside	Surrounding communities: Ajo
<b>Affected populations</b>			
Local area: households selected in 50-mile radius circle (by Census block group)	X	X	X
Supplemental local populations		Seasonal residents	A portion of destination visitors to Organ Pipe Cactus NM
Non-local area household selection	150-mile outer ring, less 50-mile inner ring	150-mile outer ring, less 50-mile inner ring	100-mile outer ring, less 50-mile inner ring (to reflect small size of waterbody)

	Case Study Classes		
	1. Stronghold Canyon	2. Pintail Lake	3. Quitobaquito Pond
<b>Cost Categories</b>			
404 permits	Per ADEQ	Per ADEQ	Per ADEQ
Mitigation costs	unknown	unknown	unknown
ADEQ-provided administrative costs, aggregated from multiple task categories	X	X	X
Property values	Unlikely to be relevant, due to public land surrounding	Unlikely to be relevant, due to public land surrounding	Unlikely to be relevant, due to public land surrounding

- a. Listed endangered species.
- b. Candidate threatened/endangered species.
- c. Federally managed areas with an extensive range of camping and other outdoor recreational activities available.

Table sources include for US Forest Service relevant websites and linked documentation, Arizona Game and Fish Department, Organ Pipe Cactus National Monument website, Google Maps, and other data, McClure Consulting LLC.

<https://www.fs.usda.gov/recarea/coronado/recreation/hiking/recarea/?recid=25334&actid=50>

<https://www.azgfd.com/wildlife/viewing/wheretogo/allenseverson/>

<https://www.nps.gov/orpi/index.htm>

**TABLE 3. MATRIX OF COST AND BENEFIT CATEGORIES AND MODELING STRUCTURES**

Benefit and Cost category	Affected parties	Applicable to Class case #:			Alignment with EPA BCA estimating variables of:	Adaptation to ADEQ model variables, other BCA analysis	Potential supplemental or future analyses	Key resource
		1	2	3				
<b>Benefit categories</b>								
Recreation, direct water:					Willingness to pay (WTP) estimating equation, "cultural"	Embodied within WTP estimates adapted from EPA document, but highly generalized <sup>d</sup>	EPA WTP function addresses only indirectly; benefit estimates from national and local recreation studies could be updated and tailored to specific categories of recreational use/users. Avoid double-counting with generalized WTP figures	EPA document; Moeltner (2019); See Table 1, studies on recreational benefits
• Fishing (recreational)				X				
• FBC (swimming, other immersive)		X		X				
• PBC (partial-body contact, incl. boating)	Local/non-local populations	X	X	X				
Recreation, in area, direct or indirect assoc. with water	Local/non-local populations; specific users for which the use, spending, and/or other data might be available				WTP equation, "cultural"	Embodied within WTP estimates adapted from EPA document, but highly generalized <sup>d</sup>	Any particular category could be addressable as benefit subcategory where deemed to be particularly influential to local economy <sup>c</sup>	
• Birding (bird habitat)		X	X	X				
• Other wildlife viewing		X	X	X				
• Hunting		X	X					
• Camping		X		X				
• Hiking		X	X	X				
• Backpacking		X		X				
• Rock climbing		X						
• Equestrian	X							
Habitat, aquatic	Local/non-local households (appreciative and other values)	X	X	X	WTP equation, "cultural" <sup>a</sup> and "provisional"	Embodied within WTP estimates adapted from EPA document	EPA WTP function addresses only indirectly <sup>d</sup>	
Habitat, wildlife (in area)		X	X	X				
Habitat, rare and endangered species				X	WTP equation, "cultural" <sup>a</sup>	Addressable as benefit subcategory where deemed to be particularly influential		

Benefit and Cost category	Affected parties	Applicable to Class case #:			Alignment with EPA BCA estimating variables of:	Adaptation to ADEQ model variables, other BCA analysis	Potential supplemental or future analyses	Key resource
		1	2	3				
						to local economy <sup>c</sup>		
Cultural observances	Assumed to apply to indigenous community members			X	Could be indirectly represented within WTP equation, "cultural," but EPA document does not address with respect to indigenous communities (see footnote 21, pages 4-5)	Addressed qualitatively, along with quantification (estimates) of populations that may be particularly affected, as special component of EJ considerations		GIS population selection; Primary interviews
Local merchant receipts	Local merchants and local/non-local customer base				Not addressed	Addressable as benefit subcategory where deemed to be particularly influential to local economy <sup>c</sup>	Recommended for consideration	Business databases; Primary interviews
Appreciative value, a.k.a. nonuse or passive use <sup>g</sup>	Local/non-local households	X	X	X	Embodied in WTP equation, with some differentiation according to one ecological setting distinction: forested or nonforested, and one geographic-proximity measure: local or non-local	Embodied within WTP estimates adapted from EPA document	Expression through a WTP function could be continuously monitored as additional studies and/or investigations of such studies progress <sup>e</sup>	EPA document and Moeltner (2019)
Agricultural:								
• Irrigation								
• Livestock watering	Farmers, ranchers, and consumers of products			X	Not addressed: EPA document notes the exclusion of irrigation and other agricultural uses from WOTUS considerations, per NWPR	Addressable as benefit subcategory where deemed to be particularly influential to local economy		Agriculture in Arizona's Economy (Bibliog. #2); <i>Arizona Agricultural Statistics</i> [annual],

Benefit and Cost category	Affected parties	Applicable to Class case #:			Alignment with EPA BCA estimating variables of:	Adaptation to ADEQ model variables, other BCA analysis	Potential supplemental or future analyses	Key resource
		1	2	3				
								USDA, National Agricultural Statistics Service
Fish consumption	Anglers	?		X	WTP estimating equation, "provisioning"	[above]	Potentially	Arizona Dept. of Fish and Game Study (2002); Recreation studies
<b>Cost categories</b>								
404 permits	Permittees				404 permit costs	EPA estimate factors <sup>b</sup> are assumed to be representative for AZ; additional guidance on, for example, the number of permits associated with any particular waterbody are provided by ADEQ	Likely to be continuously refined over time	EPA doc
Mitigation costs	Permittees				Mitigation costs related to permits	EPA estimate factors, <sup>b</sup> assumed to be representative for AZ; potential other guidance from ADEQ as per above	Ongoing refinement	EPA doc
ADEQ administrative costs, aggregated from multiple categories	ADEQ staff	X	X	X	401 administrative costs	ADEQ internal estimates by "checklist" categories, for their application to analyses individually	Ongoing refinement through additional detail	ADEQ worksheet
Property values (could also be benefit category)	Property owners in close proximity				Not addressed	Not quantified	May be appropriate in some cases	Census, private real estate data firms

Benefit and Cost category	Affected parties	Applicable to Class case #:			Alignment with EPA BCA estimating variables of:	Adaptation to ADEQ model variables, other BCA analysis	Potential supplemental or future analyses	Key resource
		1	2	3				
Program cost categories in EPA document “not quantified”: 303(c), 311, 402 <sup>f</sup>	Various industries				Not addressed	Not quantified	Unknown	

Table Notes:

- a. Benefit category assumed to be embodied in this variable, but could not be directly confirmed.
- b. As applied to state-level estimates in EPA document.
- c. Or otherwise is particularly relevant and not expected to be represented sufficiently within another benefit category (including a WTP function), and within which care must be exercised to avoid double-counting of expenditures that could be embodied in other benefit categories, from WTP or other compilation of special-use expenditures (e.g. recreationists’ spending related to some specific activity).
- d. Advances in quantifying could occur through future WTP studies and/or expenditure studies of relevant participants.
- e. These analyses may be specific to Arizona, or to elsewhere in the US or Canada.
- f. These program titles are: section 303(c) water quality standards, section 311 oil spill prevention, and section 402 NPDES permits.
- g. This may include “cultural” values such as historic significance.

Class 1 – Sky Island Stream: Stronghold Canyon, in Cochise County

Class 2 – Isolated Lakes: Pintail Lake, near Show Low

Class 3 – Ecologically, Culturally, or Historically significant water: Quitobaquito Pond, Organ Pipe Cactus National Monument, in Pima County

## Model process and structure

The working BCA model for ADEQ, in the form of a Microsoft Excel workbook, is a companion piece to this report. Components of the model are outlined within this section.

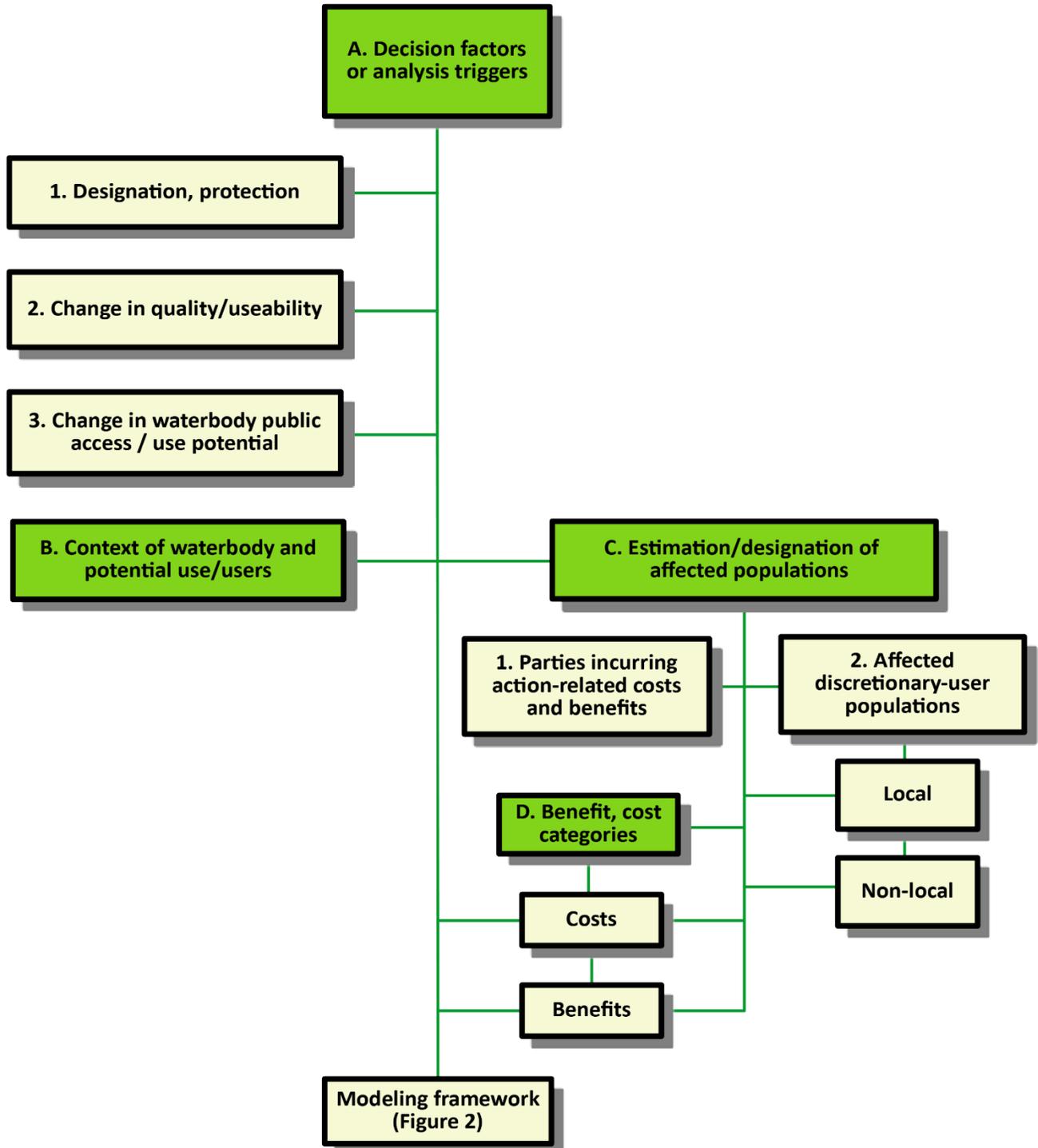
### Analysis scoping

The overall modeling process includes both an initial scoping exercise, Figure 1, and the working BCA model, summarized on Figure 2. Both the scoping exercise and working model are structured in response to other material in this report, and especially Tables 2 and 3, preceding, which address a range of considerations and benefit/cost categories pertaining to the three case study classes and also Arizona waterbodies in general. Figure 1 illustrates the following procedural steps related to scoping the benefit/cost analytical process:

- Identify the basis and context for the BCA relative to a particular waterbody.
- Align the purposes of the BCA with different types of potentially affected populations.
  - Action-related parties, if identifiable, and their “out-of-pocket” cost and benefit categories
  - Discretionary users:
    - Specialized user subsets (e.g. recreationists), if any
    - Other regular-use parties
    - Other segments of the population assumed to have primarily appreciative value.
- Identify benefits for discretionary users as measured through benefit transfer measures (and potentially other measures in the future) applicable to defined user categories.
- Investigate potential costs and their associated user types.

The scoping process is summarized in Figure 1, and described in additional detail following the figure.

FIGURE 1. ANALYSIS SCOPING FLOWCHART



Key components of Figure 1 are outlined below, with a numbering system that reflects the figure elements. The outline addresses universal issues relative to a BCA for Arizona water bodies, beyond the scope of topics that apply to any one or all of the three case study classes:

**A. Decision factors or action “triggers” that would initiate an accounting of costs and/or benefits**

1. Designation of a waterbody, giving it a status that preserves, protects, or enhances its level of usability, which may or may not include items 2 or 3 below.
2. Change<sup>15</sup> in quality sufficient to create the potential for change of use for new/expanded uses to occur, which could involve any of the following activities, roughly in order of lower to higher quality standards and use intensity:
  - Irrigation, presumably as an incidental and not primary use.
  - Support for/augmentation of ancillary uses adjacent to waters or where waters are recognizably integral to the overall area experience. Ancillary uses could include any or all non-water-based recreational activities, including hiking, birding and other wildlife watching, hunting, camping, etc.
  - Boating, which implies some level of aesthetic acceptability as well as regulatory sanction.
  - Fishing and other aquatic habitat protection.
  - Various cultural/ceremonial activities.
  - Full body contact.
  - Drinking water.
  - Habitat protection/restoration, including for rare and endangered species.
3. Change in public access to, and/or use potential of, a waterbody, due to:
  - Regulatory/jurisdictional change, including change in designation or in other protection status.
  - Change in related infrastructure, facilitating access for specific activities.

**B. Contextualizing the analysis setting**

1. Assessing how waterbody use would be affected by surrounding conditions, including: other associated locational assets, jurisdictional boundaries (especially those related to tribal communities), accessibility (physical and with respect to information about), and climate conditions and other defining characteristics. This assessment could affect the following:
  - How affected-population (households) areas are selected.
  - Possible adjustments to benefit and cost factors, or at the least notations as to how observed conditions might affect estimates under some refined estimating procedures that may be applicable in the future.
2. Assessing potential for cultural considerations, and implications. This assessment would be based on the following types of considerations:
  - Presence of indigenous populations within a selected “local” market area (and the process of selecting the local area would also involve recognizing the potential for including such populations).

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<sup>15</sup> In some cases, the “change” might not be an *improvement* in water quality but might instead be a protective measure that *maintains an existing level of quality* (i.e., protecting it from deterioration that would potentially occur in the absence of designation).

Compiling data for the local market area would also include specific recognition of other minority groups as part of the process of incorporating Environmental Justice considerations into the analysis. (This topic is also addressed in a subsequent section of the report.)

- Contact with cultural representatives (as available) in indigenous communities within the local market area and perhaps also in the “first tier” circle beyond the selected market area.
- Internet/literature search for indications of possible cultural linkages to waterbody or surrounding area, on the part of any Arizona American Indian tribe/nation.
- Discussions with umbrella organizations serving Arizona indigenous communities, such as the Intertribal Council of Arizona (ITCA) to identify any databases referencing relevant cultural/sacred sites.

### C. Designation and estimation of affected populations

1. Assess whether available uses are associated with one or more specific subsets of the population, e.g. recreationists:
  - Compile the bases/sources for identifying such users and considering their “market area.”
  - Identify potential parties that would interact with the waterbody in ways that would tend to incur *action-related* costs and benefits.
2. Select affected populations (# households): local and non-local:
  - Establish methodology, select variables, etc. including using a GIS system for household-area selection, which is compatible with EPA guidance as described below:
    - For the BCA model, the Consultants followed a concept in the EPA document, Appendix H, detailing how EPA would modify its methods for deriving two of the variables in the estimating equations related to WTP: 1) affected number of households, and 2) household incomes for this affected group (for this version of the model, applicable to Environmental Justice issues). In this modified method, a geographic information system (GIS) is used to select the areas in which households are assumed to have either a “local” or “non-local” (but still relevant) relationship to any given wetland or set of wetlands. This allows for more precise delineations of potentially affected households, including extension of any specific wetland/analysis area across state boundaries.
    - To determine the number of households in local and non-local areas for the case study waterbodies, the BCA model uses a GIS system to select Census block group areas based on two concentric circles, and aggregate the household data for the inner circle and the outer ring (the non-local area). Areas for the three case study classes are shown on Figure 3. The outer ring, 150 miles for Stronghold Canyon and Pintail Lake, was set at 100 miles for Quitobaquito Pond, reflecting the smaller size of that waterbody.

Projected future households were also estimated, so that benefits extending over time would reflect population change. Projections were available at the county level for both Arizona and New Mexico.<sup>16</sup> Households selected in the GIS system were assigned to counties, and the county-level projections used to estimate the 20-year future household count (with the assumption that

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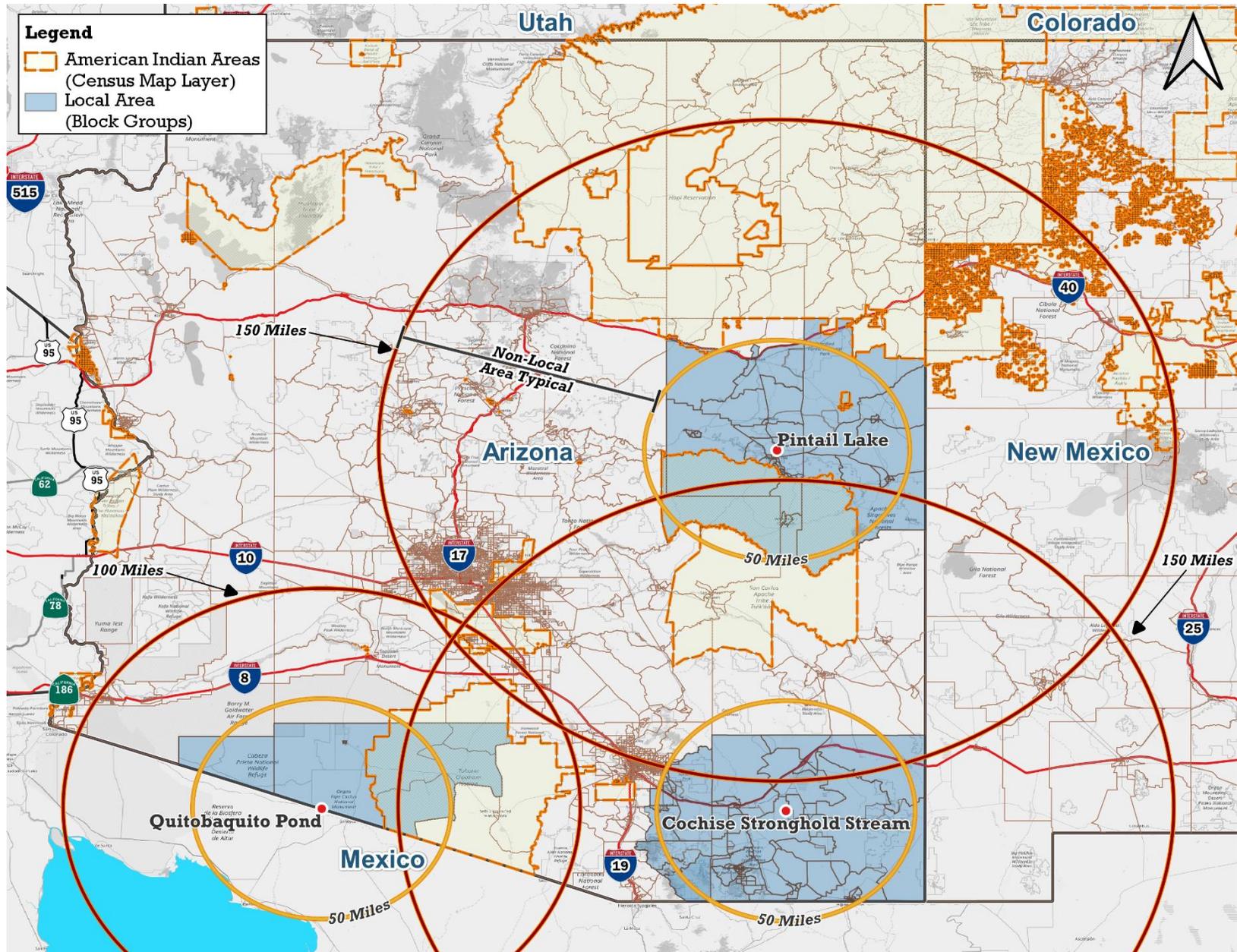
<sup>16</sup> Arizona Department of Administration, Office of Employment & Population Statistics, 12/28/2018. Arizona State and County Population Projections: 2018 To 2055, Medium Series. University of New Mexico, Geospatial & Population Studies. UNM GPS Preliminary County Projections V2020.

projected changes were uniform across the entire county). For the case study examples, some counties exhibited negative growth for the analysis period. To project benefits over the 20-year analysis period, one-half of the projected increase in households was added to the base year number to represent the average number over the analysis period.<sup>17</sup>

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<sup>17</sup> Depending on the location of a protected waterbody, the non-local (and possibly even the local) areas benefitting from the waterbody may extend into adjacent states (e.g., New Mexico, as in 2 of the 3 case study examples in this report) given standardized distances that households are assumed to be willing to travel (for example) to enjoy recreational areas. In these cases, the relevant area of the adjacent state is included in the household count used to calculate WTP for protected waters. Within the analysis, benefits accruing to Arizona households are provided as a separate subtotal. In cases where a waterbody's theoretical impact area (based on a fixed radius) extends south of the U.S. border into Mexico, the area south of the border is not include in the household calculations (since the border and related travel restrictions are presumed to effectively preclude these households from deriving significant benefits from protected waterbodies in the U.S.).

FIGURE 3. LOCAL AND NON-LOCAL AREA SELECTIONS FOR 3 CASE-STUDY CLASSES



- The White Mountain region has a substantial seasonal population, which represents an additional 16,630 households in the area on a part-time basis. Within the modeling process, this seasonal household segment is assumed to be relevant to the “local area” associated with Pintail Lake. The number of seasonal households is derived from Census data on vacant housing by type, with the relevant type being “held for seasonal, recreational, or occasional use.” Households in these units are not counted as part of the resident total, so they are an additional segment of the local “buying” population, and this segment must also be factored downward to represent the proportion of the year they are in residence locally. No attempt has been made to project the growth of this segment.

To estimate the proportion of the year within which seasonal residents affect the local economy, data on restaurant/bar sales by month for Navajo County<sup>18</sup> were reviewed to determine the pattern of sales above a baseline level, including the proportion of those sales amounts in relation to the total annual sales. On the basis of this review, a factor of 25% was applied to the seasonal household count (i.e., only one-quarter of the seasonal households (using housing units as a proxy) were counted as additional). Note that the 25% factor does not necessarily mean that one family/party is staying in the unit for three months of the year; there could be multiple parties with varying periods of use, adding up to the equivalent of 25% of a permanent household.

- Destination visitors to Organ Pipe Cactus National Monument that may also visit or otherwise become aware of Quitobaquito Pond constitute another component of local-area benefiting households. In the BCA model, this number is intended to represent only the visitors who are “materially involved” in the monument, through overnight camping, trail use, etc., and the estimate is further factored downward to reflect the fact that the pond is in a remote location within the Monument. Levels of visitation (for recreational visitors) have been relatively low in recent years, compared to figures in the 2000-2010 period, and consequently the visitor component has been projected to increase over time, in the model.

### 3. Compile data for affected discretionary-user populations (# households):

- Define an appropriate market area for use categories associated with the waterbody; that is, the maximum practical distance from which potential users could be assumed to come to the waterbody.
  - For Local involvement assumed to constitute “regular use.”
  - For Non-local involvement that may primarily consist of “appreciative value,” and infrequent or even no physical attendance.

A variety of considerations had a bearing on the selection and size of these areas, including similar concepts discussed in the EPA document (Appendix H), the size of analogous areas in the BT meta-analysis source documents used by Moultnier et al. (2019) and subsequently by EPA, and the Consultants experience with delineating trade areas associated with various types of economic activity. Ultimately, these selections are a matter of judgment about apparent reasonableness.

### 4. Relate considerations of defining and measuring the affected households to EPA guidance:

- Selected households fall into two major categories: local and non-local. The non-local areas (selected by a circle from the waterbody center point) have some overlap among the separate case study waters (and this is likely to be a typical condition within Arizona waterbodies analyzed); but because the benefits are based on number of acres or some equivalent measure of the waterbodies, each

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<sup>18</sup> Northern Arizona University Economic Policy Institute, Gross Sales by County by Sector, 2019-2021. <https://in.nau.edu/wp-content/uploads/sites/212/Gross-Sales-County-2021-vs.-2019.pdf>

selected set of households is treated as unique to its related waterbody, or to multiple waterbodies if that is the case, and therefore not subject to double-counting considerations.

#### **D. Categories of costs and benefits**

1. Define the universe of currently quantifiable direct cost and benefit categories, initially determined by those identified in EPA documentation. As discussed above, designations of affected populations (households) according to their Local or Non-local relationship to the waterbody is an important distinction, as the level of WTP benefit estimates applicable to each group varies accordingly. Another key characteristic affecting households' WTP with respect to the analyzed water body is whether its setting is "forested" or "non-forested."
2. Assess the potential for *action-related* costs and benefits to arise based on the combination of specific waterbody and actions related thereto, by compiling the bases/sources for identifying and quantifying action-related costs and benefits.

### Defining characteristics of the BCA quantitative model

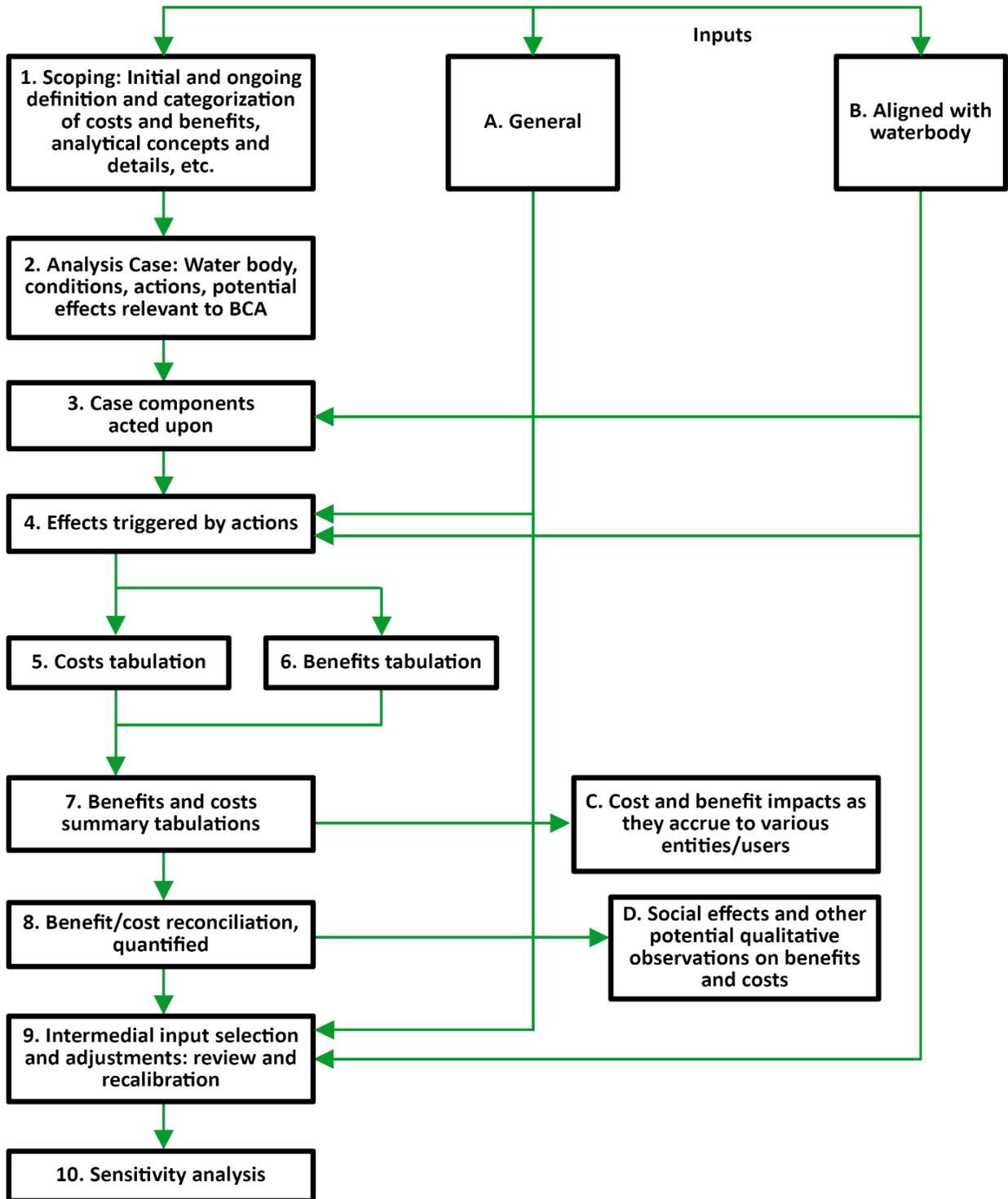
The model is designed to:

- Illustrate how different cases, conditions, etc. fit into a framework having multiple commonalities along with distinct components.
- Both summarize a process and link, conceptually and computationally, to submodels and databases that relate to the whole.
- Be user-friendly, "transportable," and adaptable.
- Encompass complexity and still remain comprehensible and media-manageable.

Physical structure and key components:

The model is based on an Excel workbook with multiple tabs, with submodels/databases linking to the main table series. Figure 2 provides readers of this report, and potential model users, with an overview of the model structure and components.

FIGURE 2. BASIC MODEL STRUCTURE



Key components of the model are described below (letters and numbers match the diagram labeling and are therefore not necessarily sequential).

Item A. Inputs, general, may include:

- Standards by water type, if/as applicable to current or future modeling efforts, and relationships to uses, etc.
- Per-user (or per-something-else, depending on possible future analytical direction) dollar values tied to specific water use types, such as specific recreation activities, etc. (Note: the current BCA model does not include these types of distinctions; all “use” benefits are assumed (at this stage of the ADEQ BCA model development) to be a part of the overall WTP for wetlands protection, as defined by the EPA document. The concept is included here due to the inherent limitations of EPA’s WTP formulation as currently documented.)
- Cost factors: permitting or other compliance (dollars by permit or some other unit), for public and private entities; ADEQ administrative costs based on categories shown in Appendix D, estimated by ADEQ staff for each of the three case studies classes, for use in the BCA model (and this “checklist” concept could generally be applied to also indicate links to other related costs such as permitting, etc. where applicable); possible user charges per unit by type; and consideration of other factors such as health impacts (as burden), as applicable or practical at this level of analysis (current or future). Factors may be directly quantifiable in economic terms, and/or indirectly quantifiable in economic terms or as social effects (as relevant).
- Benefit categories:
  - Directly quantifiable economic benefits, as WTP dollar values on a per-household, per-acre basis.
  - Benefits applicable, as dollars on some unit basis, to participants in specific activities, recreational or other.
  - Benefits indirectly quantifiable in economic terms, or identifiable and addressed on qualitative terms only, including economic and social effects (as relevant).
- Discount rates to apply to future costs and the stream of annual benefits both local and non-local households would experience (based on the WTP approach).

Item B. Inputs, aligned with WTP categorical distinctions:

- Distinctions include: forested, non-forested, and possible other categories, and other conditions specific to the waterbody (all as applicable to current or future modeling formats, with some categories as placeholders for quantitative analysis that may occur in the future, but that in the interim might be recognized for qualitative discussion only).
- Cost factors: any variation from general factors based on specifics of waterbody; opportunity costs.
- Selection of local and non-local affected households, as described in relation to Figure 1 Scoping.

Item 9. Recalibration, as appropriate:

- Maintaining “adding up”<sup>19</sup> integrity in the course of producing benefit and cost estimates related to any single waterbody. This is accomplished primarily by examining estimates for individual waterbodies in comparison with Arizona-wide estimated annualized totals for costs and WTP benefits, which would be initially informed by EPA documentation of estimated state-level costs and benefits.

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<sup>19</sup> See the Glossary (Appendix C) for an explanation of the “adding up” condition applied to this type of analysis.

Item 10. Sensitivity analysis component:

- Reviewing how the overall model structure relates to the specific analysis conditions in ways that could tend to over- or underestimate costs and/or benefits.
- Considering whether and to what extent results of a BCA could be unduly skewed or otherwise unusually sensitive, based on some modeling input or some particular characteristic of the waterbody being analyzed. This would be addressed initially by reviewing: 1) market area designations, 2) identified cost and benefit categories, and 3) cost and benefit factors applied to the estimating model. If warranted by the review, inputs and factors may then be modified, modified model results examined for effects of the sensitivity testing, and modeling components adjusted if necessary, along with accompanying notations.

Item C. Affected entities:

- For benefits: geographic and demographic general description of affected households that are both “local” and “non-local” with respect to waterbody.
- For costs: types of entities affected, with costs allocated among them to extent possible.

Item D. Social effects:

- Documenting Environmental Justice conditions. Data on disadvantaged minority populations within local and non-local market areas are compiled as part of the documentation of demographic conditions within these areas, which at a minimum, for all populations, includes number of households and household incomes as well as racial/ethnic designations by geographic sub-area (determined and illustrated through a GIS system that will also be the tool applied to data compilation). (EJ considerations are discussed in additional detail in a subsequent section.)
- Categories that may be quantified in the future, but in the interim addressed qualitatively as discussed in the following section.

## Social benefit/cost considerations and categories related to waterbody actions

### General

The model structure described in Figure 2 represents primarily the *quantitative* segment of the analysis. The analysis structure includes recognition of *qualitative* components of the BCA assessment, including:

- Benefit and cost elements that might be quantified in future ADEQ BCA frameworks, but might be only qualitatively addressed in the interim, as discussed below and indicated in Tables 2 and 3.
- Environmental Justice considerations, as discussed in the following sections.

What social conditions are likely to relate to the kinds of economic considerations in waterbody benefit/cost analyses? In the context of the BCA framework for waterbodies, given that quantification of effects is limited to certain categories by practical necessity, other effects that could in theory be *quantified*, and may be so in some future time, could in the meantime be *recognized as a social effect* if relevant. For example, when permit and mitigation costs are tied to an action that decreases the usability of a waterbody, former users will have a loss of utility and will likely attempt to find a substitute location, if possible. For those in close proximity, substitute locations would likely impose additional burdens (including costs), and could also result in the social (and economic) burden of dealing with decreased property values.

Degradation of a waterbody could also have a negative effect on the social cohesion of a community in close proximity. Conversely, social benefits tied to waterbody improvements/preservation could include an increase (or stabilizing effect) in social cohesion and property values, for communities in proximity.

## Environmental Justice considerations, methods of addressing, including the particular case of indigenous communities

The concept of Environmental Justice (EJ), as a component of social impacts, is relevant to actions affecting waterbodies. EJ is commonly understood to apply to disadvantaged minority populations. At EPA, where the concept of Environmental Justice is integral to policy-making, EJ is specifically defined as applying to “people of color, low-income, and indigenous communities.” (See Appendix E for other details on EPA and EJ.) Indigenous communities, in relation to Arizona waterbodies as well as other environmental considerations, are particularly relevant to EJ considerations, based in part on the unique characteristics of Indian Country, including the following:

- Tribal nations are sovereign entities, having complicated relationships with federal, state, and local governments in the US. While actions of these jurisdictions can directly affect indigenous communities, not all of the representational, legal, policy, and other protections of these jurisdictions can be assumed to apply to indigenous communities, or if they do apply, in the same way (or through the same mechanisms) as for non-native areas. Consequently, typical ways of addressing EJ issues in non-native communities cannot be automatically assumed to fulfill the needs of indigenous peoples.
- Many indigenous communities and their populations have historically been economically disadvantaged, and to the extent this is still the case, it would be another reason for EJ considerations to apply.
- Economic principles applied to BCA processes typically reflect “the economy” of the non-native world, which might or might not be fully representative of the economy of any particular indigenous community. This is a matter for analysts to be aware of, and which might be incorporated more formally into BCA processes for waterbodies at some future time.
- For indigenous community members, natural features, including waterbodies (which may or may not be completely “natural”), may embody cultural or religious significance in addition to utilitarian values.

## BCA model summary results

Selected tables from the ADEQ BCA model (also included in the separate electronic workbook) are reproduced in this section. The table titles and description of contents shown below.

#	Table title	Topics, for each of 3 case study waterbodies
	<b>Tables of quantified data</b>	
4	Key project descriptive variables	Size of waterbody and other descriptive information
5	Applicable quantified cost and benefit categories, over time, discounted	Enumeration of costs and benefits by primary categories; linkages to computational tables and databases
6	Benefit/cost comparison	Figures leading up to and including the benefit/cost ratio
7	Affected households	Enumeration of households in designated local and nonlocal areas, including special population segments such as seasonal, etc.; links to computational tables
8	Potential Environmental Justice components and characteristics, for	Demographic data pertinent to Environmental Justice considerations; links to population databases

#	Table title	Topics, for each of 3 case study waterbodies
	Local areas; Arizona	
<b>Tables of primarily non-quantified, qualitative observations on findings</b>		
9	Categories for potential future elaboration	Cost and benefit topics that may be quantified at a later date and could be addressed qualitatively in the interim, including references to relevancy to the case study waters
10	Social costs and benefits effects quantifiable, with some addressed qualitatively in interim	Topics treated similarly to Table 6 and also having a potential social dimension; summary of Environmental Justice indicators
11	Sensitivity review	Implications of variation in characteristics of the three case study waterbodies for analysis results; notes on comparisons of BCA model results with EPA document findings for Arizona

Tables 4 through 8 summarize key characteristics and the quantities associated with estimated costs, benefits, affected households within two different WTP categories, and populations associated with environmental Justice considerations – for the three case study classes.

**TABLE 4. KEY PROJECT DESCRIPTIVE VARIABLES**

Descriptive Variable	Class 1 - sky island stream	Class 2 - isolated lake	Class 3 - unique waterbody
Name	Cochise Stonghold	Pintail Lake & marshes (1)	Quitobaquito Pond
Size (acres or acre-equivalents (Class 1))	21.76	65	0.5
Forested?	Yes	Yes	No
Primary distinguishing characteristics	Stream, isolated segment	Lake and marshland; bird habitat	Pond; threatened/ endangered species

1. Consists of Pintail Lake and South Marsh (both artificial). Pintail is 3 ponds, 50 acres of water, and nesting islands; South Marsh fluctuates from 15 to 50 acres of flooded meadow. A total of 65 acres is applied to the BCA model.

**TABLE 5. APPLICABLE QUANTIFIED COST AND BENEFIT CATEGORIES, OVER TIME, DISCOUNTED**

Cost and Benefit Categories	Cochise Stonghold	Pintail Lake	Quitobaquito Pond
<b>Costs</b>			
404 permits	\$9,344	\$9,344	\$9,344
Mitigation			
ADEQ Admin	\$62,641	\$111,067	\$74,938
<b>Total</b>	<b>\$71,985</b>	<b>\$120,411</b>	<b>\$84,282</b>
<b>Benefits</b>			
Local WTP factors	\$0.29	\$0.29	\$0.07
<i>Local, forested</i>			
Current	\$457,695	\$658,144	
Projected	\$5,051,486	\$7,182,530	
<i>Local, non-forested</i>			
Current			\$228
Projected			\$2,923
Non-local WTP factors	\$0.030	\$0.030	\$0.009
<i>Non-local, forested</i>			
Current	\$646,321	\$4,091,597	
Projected	\$7,988,791	\$50,688,439	
<i>Non-local, non-forested</i>			
Current			\$274
Projected			\$3,792
<b>Total Local and Non-local</b>			
Current	\$1,104,017	\$4,749,741	\$501
Projected	\$13,040,277	\$57,870,970	\$6,715
<b>Total</b>	<b>\$14,144,293</b>	<b>\$62,620,711</b>	<b>\$7,216</b>
Arizona component	\$14,982,646	\$68,136,424	\$8,045

**TABLE 6. BENEFIT/COST COMPARISON**

	Cochise Stonghold	Pintail Lake	Quitobaquito Pond
Total benefits, Arizona	\$14,982,646	\$68,136,424	\$8,045
Total costs	\$71,985	\$120,411	\$84,282
Benefits/costs	208.14	565.87	0.10

**TABLE 7. AFFECTED HOUSEHOLDS**

Household Categories	Cochise Stonghold	Pintail Lake	Quitobaquito Pond
<i>Local residents, permanent</i>			
Current	72,184	30,586	1,934
Projected	74,867	31,085	2,199
<i>Local residents, seasonal, factored for temporary status</i>			
Current		16,633	
Projected		16,633	
<i>Local, destination visitor households</i>			
Current			5,000
Projected			7,284
<i>Non-local</i>			
Current	986,121	2,089,641	61,461
Projected	1,263,692	2,688,637	95,823
<b>Total Local and Non-local</b>			
Current	1,058,305	2,136,860	68,395
Projected	1,338,559	2,736,355	105,306
Arizona component	1,319,865	2,700,399	105,306

**TABLE 8. POTENTIAL ENVIRONMENTAL JUSTICE COMPONENTS AND CHARACTERISTICS, FOR LOCAL AREAS; ARIZONA**

Percent of Population by Category	AZ	Cochise Stonghold	Pintail Lake	Quitobaquito Pond
<b>Race</b>				
White alone	73.8%	82.7%	69.4%	42.9%
Black or African American alone	4.5%	4.0%	1.4%	0.2%
American Indian and Alaska Native alone	4.3%	1.0%	21.2%	47.8%
Asian alone	3.3%	1.9%	0.4%	0.0%
Native Hawaiian and Other Pacific Islander alone	0.2%	0.2%	0.1%	0.0%
Some other race alone	6.9%	2.7%	3.5%	3.4%
Two or more races	7.0%	7.5%	4.1%	5.7%
Not Hispanic or Latino	68.5%	69.7%	85.0%	74.8%
<b>Hispanic or Latino</b>	31.5%	30.3%	15.0%	25.2%
<b>Households Below Poverty Level</b>	12.8%	12.0%	18.0%	28.2%

Summaries of qualitative observations for selected variables related to the analysis, for the three case studies, are shown on Tables 9 through 11. Material on these tables represents typical commentary on waterbody topics that are intended to add perspective to the BCA process.

**TABLE 9. CATEGORIES FOR POTENTIAL FUTURE ELABORATION**

Cost and Benefit Category	Cochise Stronghold	Pintail Lake	Quitobaquito Pond
<b>Cost categories</b>			
User charges	Not addressed	Not addressed	Not addressed
<b>Benefit categories</b>			
<i>Recreation, direct water:</i>			
Fishing (recreational), FBC (swimming, other immersive), PBC (partial-body contact, incl. boating)	?	No fishing or body contact	Limited if any ??
<i>Recreation, in area, direct or indirect assoc. with water:</i>			
Hunting, Camping, Hiking, Backpacking, Rock climbing, Equestrian, Birding	Waterbody meaningfully enhances experience	Waterbody meaningfully enhances experience	Activities available in National Monument; minimal connection with waterbody
Fish consumption	?	No	Limited if any
Habitat: aquatic, wildlife, rare and endangered	Relevant	Relevant	Rare/endangered key aspect of waterbody
Cultural observances/significance	Historic connection	Historically notable use of wastewater	Indigenous ceremonial connection
Local/closest merchants and receipts	A few businesses are directly involved in immediate area	Very close to Show Low businesses	Few if any businesses in close proximity

**TABLE 10. SOCIAL COSTS AND BENEFITS EFFECTS QUANTIFIABLE, WITH SOME ADDRESSED QUALITATIVELY IN INTERIM**

Cost and Benefit Effects	Cochise Stronghold	Pintail Lake	Quitobaquito Pond
<b>Cost effects, if degradation of waterbody asset were to occur</b>			
Loss of utility/usefulness			Use by local tribal members is very important
Social, household burden of dealing with decreased property	Negligible issue here	Negligible issue here	Negligible issue here
Diminishment of social cohesion of a community	Minimal issue here	Minimal issue here	Potentially major issue given ceremonial significance of waterbody
<b>Benefit effects</b>			
Enhanced utility	Maintaining the asset is assumed to be sufficient		
Enhanced personal wealth and (potentially unpredictable) social effects of increased property values	Negligible issue here	Negligible issue here	Negligible issue here
Enhanced social cohesion of a community	Maintaining the asset is assumed to be sufficient		
Environmental justice (see Table 8)	Local population demographic profile is similar to state as a whole	Local population demographic profile exhibits high % of American Indian population and relatively high poverty level compared to AZ	Local population demographic profile exhibits very high % of American Indian population and very high poverty level, compared to AZ

**TABLE 11. SENSITIVITY REVIEW**

Sensitivity Issue	Cochise Stronghold	Pintail Lake	Quitobaquito Pond
<b>Analysis issues by waterbody</b>	Translation of stream length to acreage is based on 50' buffer factor mentioned in EPA but not definitively verified as applicable to WTP concept	As largest waterbody of 3 cases, plus location relative to populated areas in state, benefits far exceed other 2 waterbodies, based on methods applied	Very small waterbody was assigned small areas for local & non-local affected households, so minimal benefit #s. WTP approach does not capture value for vital role in protecting rare and endangered species
<b>Comparisons to EPA document</b>	The cost components of the BCA model with respect to the three case study waterbodies are understood to be, perhaps, atypically minimal, given the somewhat protected nature of the waterbodies and their settings. The EPA cost figures for Arizona are considerably higher. Benefit factors per-household and per-acre in EPA are also considerably higher than what is reflected in the BCA model.		
	While it is theoretically possible to compare the EPA results with the results of the ADEQ BCA model, on a per-acre and/or per-household basis, EPA figures can vary from the BCA model due to how EPA allocated varying benefit amounts by waterbodies' settings, local versus non-local populations, etc., or other factors in their modeling process that are not replicable by the Consultants. Regardless of such effects, one conclusion from this comparative review is that the BCA model results are conservatively derived. Based on other discussions in this report, including comments on EPA's approach to quantifying benefits, the Consultants do not recommend at this time an upward adjustment in the model's benefit factors based on the comparison with EPA figures.		

## Appendix A. Rulemaking and BCA relationships

GENERALIZED RULE-MAKING REQUIREMENTS <sup>20</sup>	BENEFIT/COST MODELING FRAMEWORK
Identification of the rulemaking and summary of the economic, small business and consumer impact statement	Analyses would typically include summaries of results, including by affected parties
An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rule making	Affected populations are specifically identified within the analysis, partly in order to quantify per-household effects where possible, and to identify potential environmental justice communities. As it relates to environmental justice (and also, more generally, to impacted private parties such as businesses), it is understood that comprehensive BCA may include the need for direct consultations with affected communities/entities.
A benefit/cost analysis addressing the following:	
<ul style="list-style-type: none"> <li>The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rule making</li> </ul>	Agency costs are one of the identified quantified cost categories (the existing model incorporates general factors from the EPA document as well as Arizona-specific data supplied by ADEQ)
<ul style="list-style-type: none"> <li>The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rule making</li> </ul>	Although not generally included as part of the initial analysis framework, political subdivisions would largely be part of an expanded, future analysis in which secondary effects (e.g., indirect and induced costs and benefits as documented through an IMPLAN model) would be considered along with direct effects. Such analyses typically include a fiscal component.
<ul style="list-style-type: none"> <li>The probable costs and benefits to businesses directly affected by the rule making</li> </ul>	Although not generally included as part of the initial analysis framework, part of the recommended potential future expansion of the B/C analysis is to identify businesses that interact directly with affected waterbody users and estimate their costs, sales, etc. resulting from the action
A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rule making. (Includes reference to private persons and consumers who are directly affected by the rule-making.)	As per the preceding items, future analyses that would include the use of tools such as IMPLAN would incorporate estimates of employment as well as dollars relating to direct costs, sales, etc.
A statement of the probable impact of the rule making on small businesses	See above, relative to economic B/C effects
A statement of the probable effect on state revenues	See above, relative to B/C effects for political subdivisions
A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making	The B/C analysis framework provides a basis for quantitatively comparing the effects of various components of costs and benefits
A description of any data on which a rule is based, data validity, etc.	Analyses would typically include documentation of data sources, reasons for using particular sources, etc.

<sup>20</sup> *Generalized Rule-Making Requirements* in the table are distilled from the following document in ADEQ's online resource library: *GREAT RESOURCE 2017-06-20 EIS info and examples of water and air bookmarked.*

## Appendix B. Annotated Bibliography

### 1. Arizona Administrative Register

*Summary:* The Administrative Register (Register) is a legal publication published by the Administrative Rules Division that contains information about rulemaking activity in the state of Arizona. The issues referenced below include code sections being amended and introduced to Chapter 11, which involves the Department of Environmental Quality Water Quality Standards.

*Study Resource:* These publications mainly refer to and make reference to topics that contribute to the Economic, Small Business, and Consumer Impact Statements. The studies referred to and referenced in this publication provide a brief summary of tourism, agriculture, or other benefits as well as cost categories or data produced from the findings. The following items are addressed in individual registers cited below:

Arizona Administrative Register (1995). Notice of Proposed Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 1, Issue 50.

*Publication Study Resource:* Proposed new section to the modification of water quality standards on the grounds of net ecological benefit based on the following criteria:

1. The discharge of effluent creates or supports an ecologically valuable aquatic; wetland, or riparian habitat in an area where such resources are limited
2. The cost of treatment to comply with a water quality standard is so high that it is more cost effective to eliminate the discharge of effluent rather than upgrade treatment
3. It is feasible for a point source discharger to completely eliminate the discharge of effluent
4. The environmental benefits associated with the discharge of effluent under a modified water quality standard exceed the environmental costs associated with elimination of the discharge and destruction of the effluent dependent ecosystem
5. All practicable point source control discharge programs, including local pretreatment, waste minimization, and source reduction programs are implemented
6. The discharge of effluent under a modified water quality standard will not cause or contribute to a violation of a water quality standard that has been established for a downstream surface water
7. The discharge of effluent will not produce or contribute to the concentration of a pollutant in the tissues of aquatic organisms or wildlife that is likely to be harmful to humans or wildlife through food chain concentration.

Arizona Administrative Register (1996). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards For Surface Waters – Economic Small Business and Consumer Impact Statement, Volume 2, Issue 20.

*Publication Study Resource:* The adopted Net Ecological Benefit rule provides a benefit to the owners of wastewater treatment plants that support or create effluent dependent waters because it provides a mechanism for relief from a water quality standard that otherwise might force costly treatment plant upgrades. The adopted rule also provides ecosystem benefits in that it provides a regulatory incentive to maintain and preserve in-stream flows in areas where riparian and aquatic resources are limited. The continued discharge of effluent may provide net ecological benefits, even though an applicable water quality standard is not being met. Examples of possible ecological benefits include:

- A. Enhancement, expansion or restoration of aquatic and riparian habitat for native, threatened or endangered aquatic species, or for migratory waterfowl
- B. Provision or enhancement of habitat or food sources for native, threatened and endangered species that are terrestrial
- C. Enhancement of species diversity
- D. Enhancement or restoration of riparian values (e.g. cottonwood/willow habitat, improved bird and wildlife habitat)

Arizona Administrative Register (2001). Notice of Proposed Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 7, Issue 11.

*Publication Study Resource:* Proposed decision criteria for *Social and economic impact of Tier 3 antidegradation protection*: The Director may take into consideration the potential social and economic impact of a unique water classification and the establishment of Tier 3 antidegradation protection, including:

- a. Impact of a prohibition of new point source discharges and expansion of existing point source discharges, including possible limits on discharges to the tributaries of a proposed unique water and possible impacts on growth and development.
- b. Impact of possible future restrictions on land use activities in a unique water's watershed, including cattle grazing, timber harvesting, mining, recreation, and agriculture.
- c. The impact of stricter requirements for §401 certification of federal permits and licenses, including NPDES and §404 permits.
- d. Impact on private property rights and the potential for regulatory "takings."
- e. Ecosystem and preservation values.

Arizona Administrative Register (2002). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 8, Issue 13.

Arizona Administrative Register (2008). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 14, Issue 52.

Arizona Administrative Register (2016). Agency Certificate Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 22, Issue 36.

*Publication Study Resource:* ADEQ proposed to eliminate the requirement that a discharger have a plan to eliminate the discharge under active consideration as part of what must be demonstrated. Communities and developers should benefit by eliminating an extra burden in seeking to use high quality effluent to create aquatic and riparian ecosystems.

Arizona Administrative Register (2017). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 23, Issue 6.

*Publication Study Resource:* Estimated costs and benefits to consumers and the public mentioned in recreation activities (e.g., Ironman at Tempe Town Lake), fishing activities, and agricultural productivity.

Arizona Administrative Register (2019). Notice of Final Rulemaking, Title 18, Environmental Quality, Chapter 11, Department of Environmental Quality, Water Quality Standards, Volume 25, Issue 5.

*Publication Study Resource:* See notes regarding interface with AOT studies under *Agriculture in Arizona's Economy* and *The Economic Contributions of Water-related Outdoor Recreation in Arizona*, below.

## **2. Agriculture in Arizona's Economy**

*Summary:* This report explores agriculture's contribution to the Arizona economy by examining the entire agribusiness system in Arizona.

*Study Resource:* The economic contribution analysis was conducted using input-output modeling and the premiere software for this type of analysis, IMPLAN Version 3.1. IMPLAN is a modeling system of a regional economy that is based on national averages of production conditions. This model was refined based on the best available data to more accurately reflect production conditions in Arizona.

*Applicability to current benefit/cost estimating procedures:* Uses IMPLAN system to translate *direct* economic effects of some action into *secondary* effects, reflecting the multiplier effects of actions through the economic system. The practice represented by this modeling tool, widely used in economic impact assessments, would be a logical eventual extension of cost and benefit estimating for Arizona water bodies.

Kerna, A., & Frisvold, G. (2014). *Agriculture in Arizona's Economy: An Economic Contribution Analysis. Department of Agricultural & Resource Economics. University of Arizona.*

## **3. Buehman Canyon Creek – Economic Benefits of Unique Water Designation Study of Buehman Canyon Creek**

*Summary:* This study reviews the economic benefits of Buehman Canyon Creek for the consideration of determining the water body as a unique water designation.

*Study Resource:* Provides guidance on factors that need to be considered in a comprehensive examination of costs and benefits in the economic impact statement for proposed unique water designation.

*Applicability to current benefit/cost estimating procedures:* This study mentions economic benefits that are quantifiable, but does not include the data methodology used to support the economic benefits associated with the proposed unique water designation for Buehman Canyon Creek.

Colby, B.G. (1996) *Buehman Canyon Creek – Economic Benefits of Unique Water Designation Study – March 1996. Arizona Department of Environmental Quality.*

## **4. The Economic Benefits of Recreation in Rural Arizona**

*Summary:* This report provides a summary analysis of tourism and recreation as factors influencing the state's economy and local economy's within the state.

*Study Resource:* This report summarizes park recreation tourism economic benefits, the benefits to rural areas, and the need to develop more facilities to access recreation lands. Drawing from the published survey of visitors of Arizona State Parks conducted between 1987-1988, visitors were asked how much money their group spent during their trip within 50 miles of the state park they were visiting, average expenditures were produced per visitor group per trip and were applied to park attendance counts to document total expenditures spent within 50 miles of state parks by visitors in 1987.

*Applicability to current benefit/cost estimating procedures:* The reference cited for this document, entitled "*The 1987-1988 Use Study of Arizona State Parks Visitors*," for the Arizona State Parks Board in 1989, provides some quantified data for visitor expenditures that lends itself to capturing economic benefits of this type.

Spear, S. (1989) Rural Arizona... The Economic Benefits of Recreation, A Summary Analysis of Tourism and Recreation as Factors Influencing State and Local Economies. *Arizona State Parks Board Statewide Planning Section*.

## **5. The Economic Contributions of Water-related Outdoor Recreation in Arizona**

*Summary:* A study of outdoor recreational activity on or along the water to estimate the level of participation in the state and the contributions from these activities to the county and state economies.

*Study Resource:* The analysis is structured around estimating three sets of metrics: participation, spending, and economic contributions. Participation estimates for this study relied largely on two data sources to characterize outdoor recreation on or along the water. Economic Contributions were estimated by combining spending estimates with data that models economic sector interactions in a given geography. Expenditure data were collected for different categories (e.g., groceries, fuel, equipment, etc.) as part of the OIA survey, which enabled allocation of spending to specific economic sectors. These data were then run through an IMPLAN™ model of the Arizona statewide economy using software produced by MIG, Inc. The resulting county-level and water-specific estimates reflect the contribution that outdoor recreation in those locales has on the statewide economy. Appendix A in the document provides additional background information on economic contributions.

*Applicability to current benefit/cost estimating procedures:* See notes on IMPLAN under *Agriculture in Arizona's Economy*. The Arizona Office of Tourism (AOT) sponsors periodic generalized studies related to Arizona visitors, including types of activities, expenditures, economic impacts, etc. To the extent that benefit/cost modeling of water bodies/designations is expanded into specific consideration of benefits related to riparian-focused activities, these location/activity-specific studies (#4 as well as this one) can add to the specificity of benefits associated with activities of particular interest.

Southwick Associates (2019). The Economic Contributions of Water-related Outdoor Recreation in Arizona: A Technical Report on Study Scope, Methods, and Procedures. *Audubon Arizona*.

## **6. Socioeconomic consequences of mercury use and pollution**

*Summary:* In the past, human activities often resulted in mercury releases to the biosphere with little consideration of undesirable consequences for the health of humans and wildlife. This paper outlines the pathways through which humans and wildlife are exposed to mercury.

*Study Resource:* This paper examines the life cycle of mercury from a global perspective and then identifies several approaches to measuring the benefits of reducing mercury exposure, policy options for reducing Hg emissions, possible exposure reduction mechanisms, and issues associated with mercury risk assessment and communication for different populations. This study also briefly reviews the methods used to quantify the benefits to human health associated with reduced mercury exposure, which include Benefit-cost Analysis and the Cost-effectiveness Analysis.

*Applicability to current benefit/cost estimating procedures:* This paper does not include any quantifiable data used in its review of the Benefit-cost Analysis or Cost-effectiveness Analysis.

Swain, E. B., Jakus, P. M., Rice, G., Lupi, F., Maxson, P. A., Pacyna, J. M., ... & Veiga, M. M. (2007). Socioeconomic consequences of mercury use and pollution. *Ambio*, 45-61.

## **7. Nature-based Tourism and the Economy of Southeastern Arizona**

*Summary:* This study documents expenditures in the Sierra Vista area by visitors to the San Pedro Riparian National Conservation Area (RNCA) and by bird watchers at Ramsey Canyon Preserve. Information on visitor

expenditures, characteristics and preferences is reported, along with implications for nature-based tourism in southeastern Arizona. This study examined visitation to only two natural areas and so economic impacts reported here represent only a portion of the impacts of visitor spending associated with all nature preserves located in southeastern Arizona. The study indicates that 95% of visitors to Ramsey Canyon and the San Pedro RNCA go to at least one other site in southern Arizona on a typical visit to the area, and make expenditures in communities located near these sites.

*Study Resource:* The expenditure analysis indicates the importance of an overnight stay for communities to experience significant economic benefits from visitors.

*Applicability to current benefit/cost estimating procedures:* See notes regarding interface with AOT studies under *The Economic Contributions of Water-related Outdoor Recreation in Arizona*, above.

Crandall, K., Leones, J., & Colby, B. G. (1992). *Nature-based Tourism and the Economy of Southeastern Arizona: Economic Impacts of Visitation to Ramsey Canyon Preserve and the San Pedro Riparian National Conservation Area, Final Report*. Department of Agricultural and Resource Economics, the University of Arizona.

## **8. Notes on inclusion of source studies and data preparation for wetlands meta-data**

*Summary:* This memorandum provides reasons for excluding specific wetland valuation studies from the meta-data that was used in the meta-analysis for estimating national benefits in the *Economic Analysis for the Proposed "Revised Definition of 'Waters of the United States'" Rule* (U.S. EPA and Army, 2021).

*Study Resource:* Provides an overview of valuation scenarios considered in literature and the assumptions made to fill in data gaps for each study used for wetlands meta-data.

*Applicability to current benefit/cost estimating procedures:* Provides a critical meta-analysis of literature and studies that support estimating national benefits in the *Economic Analysis for the Proposed "Revised Definition of 'Waters of the United States'" Rule* (U.S. EPA and Army, 2021).

ICF. 2021. Notes on inclusion of source studies and data preparation for wetlands meta-data. Memorandum to Todd Doley and Steve Whitlock. November 22, 2021.

## **9. Using Meta-Analysis for Large-Scale Ecosystem Service Valuation: Progress, Prospects, and Challenges**

*Summary:* This article discusses prospects and challenges related to the use of meta-regression models (MRMs) for ecosystem service benefit transfer, with an emphasis on validity criteria and post-estimation procedures given sparse attention in the ecosystem services literature. Includes a meta-analysis of willingness to pay for water quality changes that support aquatic ecosystem services, and the application of the model to estimate water quality benefits under alternative riparian buffer restoration scenarios in New Hampshire's Great Bay Watershed. These illustrations highlight the advantages of MRM benefit transfers, together with the challenges and data needs encountered when quantifying ecosystem service values.

*Study Resource:* The illustrated case study discussed in this paper helps to demonstrate how evaluations of issues can help clarify the suitability of Meta-Regression Modeling (MRM) predictions for benefit transfers.

*Applicability to current benefit/cost estimating procedures:* This illustrates benefit transfers using scenarios of potential water quality, setting variables, geospatial and socioeconomic data for benefit transfer scenarios, the data methodology, indexing calibration, WTP estimate predictions per household, and the challenges for Large-Scale Ecosystem Service Valuations.

Johnston, R. J., & Bauer, D. M. (2020). Using meta-analysis for large-scale ecosystem service valuation: progress, prospects, and challenges. *Agricultural and Resource Economics Review*, 49(1), 23-63

#### **10. Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule**

*Summary:* This Economic Analysis (EA) assesses the potential impacts of the proposed changes to the definition of “waters of the United States” based on the potential effects to Clean Water Act (CWA) programs that rely on that definition.

*Study Resource:* Provides an overview of economic analysis under the primary and secondary baselines for the CWA. The paper discusses the multiple components of the secondary baseline assessment, and provides estimates of the benefits and costs associated with this assessment, by states and for the US.

*Applicability to current benefit/cost estimating procedures:* This report provides broad guidance for estimating costs and benefits, key components of which, including benefits based on WTP, and various cost categories, were incorporated into a recommended BCA modeling structure for ADEQ.

U.S. Environmental Protection Agency and Department of the Army. (2021). *Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule.*

[https://www.epa.gov/system/files/documents/2021-11/revised-definition-of-wotus\\_nprm\\_economic-analysis.pdf](https://www.epa.gov/system/files/documents/2021-11/revised-definition-of-wotus_nprm_economic-analysis.pdf)

#### **11. Supplementary Material to the Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule**

*Summary:* This document includes the Compendium of State and Tribal Regulations for CWA programs by state that corresponds to the *Economic Analysis for the Proposed “Revision Definition of ‘Waters of the United States’” Rule* report cited above.

*Study Resource:* See *Economic Analysis for the Proposed “Revision Definition of ‘Waters of the United States’” Rule* report cited above.

*Applicability to current benefit/cost estimating procedures:* Adds additional context to the approach EPA used in preparing estimates of costs and benefits, as addressed in *Revised Definition of ‘Waters of the United States Rule.*

U.S. Environmental Protection Agency and Department of the Army. (2021). *Supplementary Material to the Economic Analysis for the Proposed “Revised Definition of ‘Waters of the United States’” Rule.*

[https://www.epa.gov/system/files/documents/2022-01/epa-hq-ow-2021-0602-0087\\_content.pdf](https://www.epa.gov/system/files/documents/2022-01/epa-hq-ow-2021-0602-0087_content.pdf)

#### **12. Upgrading Wetland Valuation via Benefit Transfer**

*Summary:* This study uses updated meta-data on wetland valuation to illustrate how a state-of-the-art meta-regression framework that is consistent with economic theory can be adapted to generate benefit transfer predictions for incremental changes in wetland acreage over space and time. This study also applies this framework to estimate losses in benefits for realistic changes in wetland acreage for some sub-watersheds, as can be expected under the proposed re-definition of the “Waters of the United States” to be protected under the Clean Water Act (CWA).

*Study Resource:* This study provides an illustration of how recent advances in meta-analytic methods could be applied to value changes in wetland acreage regionally or nationally.

*Applicability to current benefit/cost estimating procedures:* This study compiles an updated meta-data set on willingness to pay (WTP) to preserve or restore wetlands in the United States, drawing from 17 primary valuation

studies as current as 2016. This study also takes advantage of recent advances in meta-regression modeling and computation of predicted benefits via the econometric framework proposed in the previous Moeltner 2019 study within the context of valuing surface water quality changes via Benefit Transfers (BT).

Moeltner, K., Balukas, J. A., Besedin, E., & Holland, B. (2019). Waters of the United States: Upgrading wetland valuation via benefit transfer. *Ecological Economics*, 164, 106336.

## Appendix C. Glossary of terms used in this document

**Action-related** [referring to costs and benefits and associated parties]: A category of out-of-pocket expenses, or proceeds derived, resulting from some interaction with the waterbody or related aquatic assets.

**Adding up**: A constraining function in Benefit Transfer analysis in which analysts maintain the intent to limit WTP estimates applicable to any one waterbody so that they are consistent with estimates applicable to incremental increases in the size, number, etc. of analyzed waterbodies – in other words, so that individual WTP totals are not greater than a WTP estimate that would apply to all relevant waterbodies collectively within a given geographic area.

**Appreciative value**: The value placed on a waterbody due partially or entirely to the satisfaction (appreciation) of knowing that it exists (or serves certain purposes through its existence), and where physical contact or proximity may be infrequent or even nonexistent. Also sometimes referred to as “nonuse” or “passive use” of a waterbody-type resource.

**Benefit transfer (BT)**: The analytical method of projecting benefits documented through a study conducted for one place and time to, usually, some other place and time. In the context of this document, BT applies to studies estimating users willingness-to-pay (WTP to have some waterbody asset at some level of usability).

**Discretionary-user populations**: 1) Recreationists, directly related to a waterbody or indirectly related to it as part of an overall environment being experienced; 2) Persons whose involvement with a waterbody may primarily consist of “appreciative value,” and infrequent or even no physical attendance; and 3) Persons with a cultural or ceremonial relationship with the waterbody.

**Local and non-local market (user) areas**: Terminology from EPA documentation referring to 1) an affected population (in number of households) with some degree of proximity to an analyzed waterbody (local), and 2) a more-remote (non-local), regional-scale population (# households) that attaches some value to the analyzed waterbody based primarily on being aware of its existence, and not dependent on physical proximity.

**Regular use** [of waterbody]: Waterbody use activities associated with a localized population having relatively convenient access.

**Willingness to pay (WTP)**: A technique applied, generally in survey research, to derive value estimates for some asset for which direct payments are not applicable. For example, a waterbody is not likely to be accessed by means of a gated entrance where a fee is extracted; so users of the waterbody are queried, through a survey process, as to what they would be willing to pay to access it (or to simply have it existing and serving various purposes).

**WOTUS**: Waters of the United States.

## Appendix D. ADEQ project capacity worksheet for application to estimating waterbody management administrative costs

Project Prioritization Matrix	Product or Service (Widget)	Number of Widgets Produced	Avg. Touch Time per Widget, hr	First Pass Yield, %	Avg. Rework Touch Time/Widget, hrs.	Total Rework Time, hrs.	Total Touch Time, hrs. (incl. rework)
<b>Total</b>							<b>16,323.6</b>
GIS Support	Basic infrastructure and upkeep	10	1.5	95%	0.3	3.0	18.0
Standards Review/Development	Develop background information for each pollutant in Appendix A	2259	4.8	80%	1.0	2182.2	13,093.2
Standards Review/Development	Appendix B review for each designated use	60	1.6	80%	0.3	19.2	115.2
Water Quality Sampling	Effectiveness monitoring	15	7.0	80%	1.4	21.0	126.0
WOTUS Determinations	Jurisdictional evaluations	400	4.0	80%	0.8	320.0	1,920.0
Impaired Waters	Analyzing data for impaired	5	2.0	80%	0.4	2.0	12.0
Administrative Functions	VS Budget Management	30	1.0	80%	0.2	6.0	36.0
Administrative Functions	General Legal Question, 1 Page Memorandum (Includes Research)	1	6.0	80%	1.2	1.2	7.2
Administrative Functions	General Legal Question, 2-5 Page Memorandum (Includes Research)	1	16.0	80%	3.2	3.2	19.2
Administrative Functions	General Legal Question, 5+ Page Memorandum (Includes Research)	1	30.0	80%	6.0	6.0	36.0
Administrative Functions	Policy Analysis, 1 Page Memorandum (Includes Research)	1	8.0	80%	1.6	1.6	9.6
Administrative Functions	Policy Analysis, 2-5 Page Memorandum (Includes Research)	1	24.0	80%	4.8	4.8	28.8
Administrative Functions	Policy Analysis, 5+ Page Memorandum (Includes Research)	1	40.0	80%	8.0	8.0	48.0
Administrative Functions	Drafting, Regulatory (Rule Language, Per Rule, Includes Research)	14	16.0	80%	3.2	44.8	268.8
Administrative Functions	Stakeholder Event, Planning (Website Updates, Meeting Invites, Internal Approval, etc.)	4	24.0	80%	4.8	19.2	115.2
Administrative Functions	Stakeholder Event, Deliverables (Presentations, handouts, etc.)	4	8.0	80%	1.6	6.4	38.4
Administrative Functions	Legal Research, General	10	4.0	80%	0.8	8.0	48.0
Administrative Functions	Legal Research, State Statutes or Rules	10	8.0	80%	1.6	16.0	96.0
Administrative Functions	Legal Research, Federal Statutes or Rules	5	16.0	80%	3.2	16.0	96.0
Administrative Functions	Legislative or Regulatory Supporting Documents (Flowcharts, EIS, Studies, State by State Analysis, etc.)	5	32.0	80%	6.4	32.0	192.0

## Appendix E. EPA and Environmental Justice

EJ concepts in EPA policy-making are summarized in the following excerpts from EPA webpages:

“EPA's [environmental justice] goal is to provide an environment where all people enjoy the same degree of protection from environmental and health hazards and equal access to the decision-making process to maintain a healthy environment in which to live, learn, and work.”<sup>21</sup>

EPA has developed an Environmental Justice mapping and screening tool called EJScreen, which combines environmental and demographic indicators in maps and reports. Material below is taken from their documentation of this tool, as noted:

“EJScreen allows users to access high-resolution environmental and demographic information [at the Census block group level] for locations in the United States, and compare their selected locations to the rest of the state, EPA region, or the nation. The tool may help users identify areas with:

- People of color and/or low-income populations
- Potential environmental quality issues
- A combination of environmental and demographic indicators that is greater than usual
- Other factors that may be of interest”<sup>22</sup>

EJScreen uses an “EJ Index” that combines demographic factors in a particular location with a single environmental factor relevant to that location, and consequently has the capability to show each environmental indicator and each demographic indicator, one at a time. There are eleven EJ Indexes (with names such as, for example, Traffic Proximity, Lead Paint, Hazardous Waste Proximity) in EJScreen reflecting 12 environmental indicators.<sup>23</sup>

One of the indexes, titled “Wastewater Discharge,” deals specifically with water issues. Generally, however, this tool would appear to have limited application for recognizing environmental justice considerations within the BCA modeling framework related to this assignment. The indexing approach, with its focus on combining hazards with demographic data, actually complicates the primary intent of environmental justice related to the recommended benefit/cost modeling, which is to identify, initially, minority (including indigenous) and low-income populations that could be affected by waterbody decisions. This identification step then provides additional specific context within which to consider affected populations in relation to anticipated waterbody actions.

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<sup>21</sup> <https://www.epa.gov/environmentaljustice>

<sup>22</sup> <https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen>

<sup>23</sup> <https://www.epa.gov/ejscreen/environmental-justice-indexes-ejscreen>



Patricia Grant &lt;patricia.grant@azdoa.gov&gt;

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**Fwd: AMB Response**

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**Patricia Grant** <patricia.grant@azdoa.gov>  
To: Patricia Grant <patricia.grant@azdoa.gov>

Wed, Nov 23, 2022 at 4:38 PM

----- Forwarded message -----

From: **Pat Mcsorley** <patricia.mcsorley@azmd.gov>  
Date: Tue, Nov 1, 2022 at 10:31 AM  
Subject: Re: AMB Response  
To: Ashley Liu <ashley.liu@azdoa.gov>

Thanks Ashley. Will have the materials for you in advance of November 29 so you can review. Thanks for your assistance today.  
Pat

On Tue, Nov 1, 2022 at 10:14 AM Ashley Liu <ashley.liu@azdoa.gov> wrote:  
Thank you, Pat.

Are you able to join the meeting? See below for dial-in information.

GRRC Meeting  
Tuesday, November 1 · 10:00am – 12:00pm  
Google Meet joining info  
Video call link: <https://meet.google.com/qau-vfda-aem>  
Or dial: (US) +1 319-553-6490 PIN: 350 435 506#  
More phone numbers: <https://tel.meet/qau-vfda-aem?pin=3600305344664>

On Tue, Nov 1, 2022 at 10:10 AM Pat Mcsorley <patricia.mcsorley@azmd.gov> wrote:

- The following states require physicians to register or receive a waiver if they wish to practice across state lines.

Arizona  
Florida  
Indiana  
Kansas  
Maine  
Minnesota  
Vermont  
Washington  
West Virginia

Other state fees to follow.

The Arizona Medical Board does not have an algorithm to determine licensing fees. All licenses/registrations are worked on continuously by licensing staff.

--

Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants

| |

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Patricia McSorley  
Executive Director  
Arizona Medical Board  
Arizona Regulatory Board of  
Physician Assistants